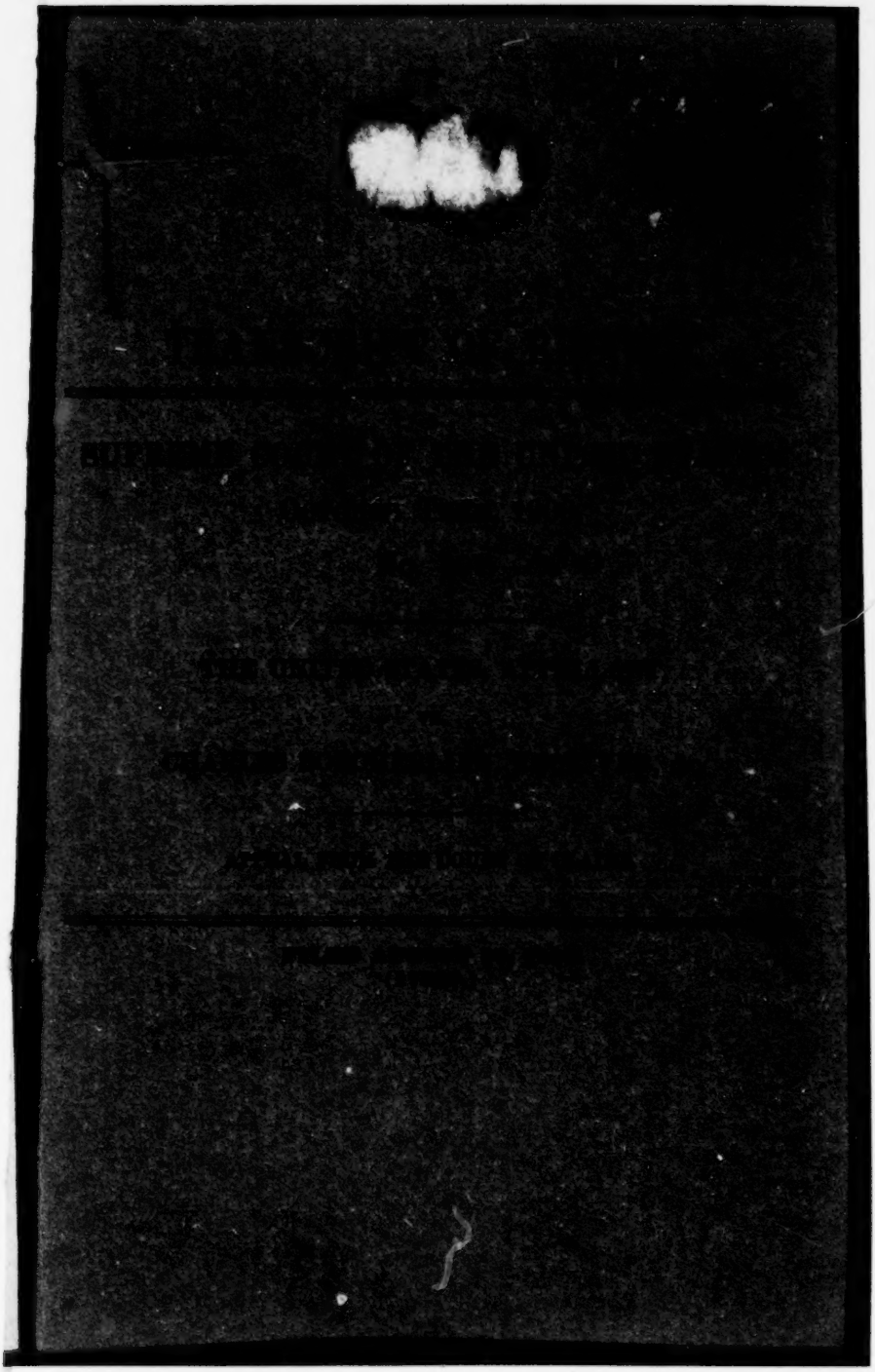

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 407.

THE UNITED STATES, APPELLANT,

vs.

CHARLES BORCHERLING, RECEIVER, &c.

APPEAL FROM THE COURT OF CLAIMS.

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In the Court of Claims.

CHARLES BORCHERLING, RECEIVER,
vs.
THE UNITED STATES. } No. 21140.

Petition—Filed August 12, 1898.

To the Honorable Court:

Your petitioner is a citizen of the United States and a resident of Newark, in the State of New Jersey. By a decree of the chancery court of New Jersey your petitioner on the 10th day of October, 1892, was duly appointed receiver for the property and things in action belonging to or held in trust for one Rodman M. Price, formerly a purser in the United States Navy, a resident of the said State of New Jersey, and duly subject to the jurisdiction of said court. By said appointment as a matter of fact the title to all the property, real and personal, of said Price passed to your petitioner by virtue of said decree; that your petitioner gave bond as required by the court and entered upon the duties of his office as such receiver; that your petitioner notified the Secretary of the Treasury of his said appointment and of the acceptance of his said office, and that by virtue of his said appointment your petitioner demanded some time previous to the 22d day of December, 1893, of the Secretary of the Treas-

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ury to be paid as belonging to him in his capacity as receiver, any money payable to said Rodman M. Price, under and upon an adjustment of his accounts under act of Congress approved 23d February, 1891; that under said act of Congress the accounting officer of the Treasury stated the accounts of said Rodman M. Price, and found on the 31st of August, 1892, that there was due him and payable to him on that date a certain sum of money; that on the 22d day of December, 1893, your petitioner again notified the Secretary of the Treasury that the money held in the Treasury as payable to said Price was claimed by your petitioner and notified the Secretary that he would hold the United States responsible if said money or any part thereof was paid to the said Price or his attorney; that your petitioner had previously given verbal explanation to the proper officers of the Treasury as to the claim by your petitioner in his capacity as receiver of such money, and that the officers of the Treasury well understood that it was claimed by the petitioner that by virtue of the assignment aforesaid there was no right in the officers of the Treasury to pay to said Price said money, instead of to your petitioner as such receiver.

Yet, notwithstanding such notice, and in violation of the right of your petitioner, the Secretary of the Treasury on the 23d of December, 1893, paid over to said Price the sum of seven thousand nine hundred dollars, which sum of money belonged, as your petitioner avers, to him as receiver, to be administered by him in the courts of New Jersey. Your petitioner says that such payment was null and void, and did not discharge the indebtedness of the United States to your petitioner as such receiver.

Wherefore, your petitioner claims that there is due him from the

defendant, the United States, the sum of seven thousand and nine hundred dollars, excluding all set offs and just grounds of defense, and demands judgment of this court in said sum.

My attorney is Frank W. Hackett, Washington, D. C.

CHARLES BORCHERLING.

STATE OF NEW JERSEY,
County of ———, ss:

Personally appearing, Charles Borcherling made oath that the statement by him subscribed above is true to the best of his knowledge and belief, before me, a notary public, resident at Newark, New Jersey, duly commissioned and sworn, as witness my notarial seal this 11th day of August, 1893.

[L. S.]

J. WHITEHEAD,
Notary Public in and for the State of New Jersey.

FRANK W. HACKETT, *for Claimant.*

3 II—*Traverse—Filed February 6, 1900.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney-General.

4 III.—*Findings of fact and conclusion of law—Filed April 2, 1900.*

This case having been heard by the Court of Claims, the court, upon the evidence, make the following

FINDINGS OF FACT:

I.

Rodman M. Price lived in the State of New Jersey and died there June 8, 1894. (Agreed facts based on the statement of facts in opinion of Harlan, J., in Price v. Forrest, 173 U. S., 410, page 1.)

II.

By act of Congress approved February 23, 1891, the Secretary of the Treasury of the United States was authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy and acting navy agent at San Francisco, crediting him with the sum paid over to and receipted for by

his successor, A. M. Van Nostrand, acting purser, January 14, 1850, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

III.

August 31, 1892, the Treasury officials adjusted Price's accounts and found there was due him $76,204.08, which included a credit of $75,000 that Price said he had advanced to Van Nostrand from his private funds.

IV.

In 1857 Samuel Forrest recovered in the supreme court of New Jersey a judgment against Price for $17,000 and costs. Execution on that judgment was returned unsatisfied. Forrest died in 1869, intestate.

In 1874 his widow, Anna M. Forrest, as administratrix of his estate, revived the judgment by scire facias. In her bill she prayed discovery, injunction, and the appointment of a receiver. Price and his wife answered. The cause slept till August 9, 1892, when Mrs. Forrest, administratrix, filed a petition stating that since filing her bill of complaint no payment had been made on the judgment against Price; that neither she nor her solicitors had been able to find any personalty or
5 real estate belonging to Price by levy upon and sale of which any part of the amount due on the judgment could be obtained; that it had lately come to her knowledge that about $45,000 was about to be paid Price by officers of the Treasury of the United States; that that sum was to be paid by the delivery to Price or his attorneys of a draft of the Treasurer of the United States payable to his order; that said draft was to be made and the transaction closed on the 15th day of August thereafter; and if Price obtained said money he would, unless restrained, put the same beyond the reach of the petitioner.

The petitioner prayed the appointment of a receiver of the draft, and that Price be ordered immediately on the receipt of such draft to indorse the same to the receiver, to the end that the same might be received by him as an officer of the court and disposed of according to law.

V.

The chancellor, August 8, 1892, issued a rule, returnable September 12, 1892, to show cause and restraining Price from making any indorsement of the draft referred to in the petition.

VI.

A duly certified copy of the order was served upon Price August 10, 1892. Nevertheless, after that date Price received from the Assistant Treasurer of the United States at Washington and, without permission of the court, collected four several drafts signed by that officer for the respective sums of $2,704.08, $13,500, $20,000, and $9,000, in all the sum of $45,204.08, leaving in the hands of the United States of the amount due on the settlement of Price's accounts the sum of about $31,000.

VII.

On the 10th day of October, 1892, Charles Borcherling was appointed by the chancery court receiver in said cause of the property and things in action belonging or due to or held in trust for Price at the time of issuing said executions, or at any time afterwards, and especially of said four drafts, with authority to possess, receive, and sue for such property and things in action and the evidence thereof; and it was made the duty of the receiver to hold such drafts subject to the further order of the court. The receiver was required to give bond in the sum of $40,000, conditioned for the faithful discharge of his duties. At the same time Price was ordered to convey and deliver to the receiver all such property and things in action and the evidence thereof, and especially forthwith to indorse and deliver the drafts to him, and he and all agents or attorneys appointed by him were enjoined and restrained from intermeddling with the receiver in regard to said drafts, and ordered, if in possession or control thereof, to deliver them to the receiver with an indorsement to that officer or to the clerk of the court for deposit; provided, the order should be void if the drafts other than the one for $9,000 were delivered with Price's indorsement to the clerk, the proceeds to be deposited to the credit of the cause. Price was expressly enjoined from making any indorsement or appropriation of the drafts other than to the receiver or the clerk for deposit.

6 VIII.

The receiver gave the required bond, and having entered upon the duties of his office, he caused a copy of the above order to be served upon Price, and demanded compliance with its provisions.

IX.

In 1892, the particular day not being stated, the chancery court issued an attachment against Price for contempt of court in disobeying the order of August 8, 1892. By an order made May 18, 1894, the court held him to be guilty of such contempt, and he was directed to pay the receiver the sum of $31,704.08, and a fine of $50 and costs, and in default of obedience to that order to be imprisoned in the county jail until it was complied with. (7 Dickinson (52 N. J., Eq.), 16, 31.) Upon appeal to the court of errors and appeals, the order of the chancery court was affirmed. (8 Dickinson (53 N. J., Eq.), 693.)

X.

The Treasury Department, at the time of allowing the $76,204.08, withheld $31,000, under the provisions of the act of March 3, 1875 (18 Stat., 481), to await the determination of a suit to be instituted against Price, or surety upon Van Nostrand's bond as acting purser, United States Navy.

The suit was instituted, but was dismissed some time previous to December 22, 1893.

XI.

On the 16th of July, 1892, counsel for Mrs. Forrest wrote the Secretary of the Treasury referring to a previous letter to the Department of May 14, 1891, in the matter of the claim of Rodman M. Price, and asking to be seasonably advised in the case the Department took action in the direction desired by Price.

The Secretary was advised that Mrs. Forrest could prove to the satisfaction of the Department that if Mr. Price did turn over $75,000, or any large sum, to the United States a part of that sum, namely, $17,078.04, must have belonged to Mrs. Forrest; that it was trust money, and it would not be equitable to cause that much to be paid to Price.

XII.

By letter of November 27, 1893, counsel for the receiver notified the Secretary of the Treasury of Borcherling's appointment and qualification by giving bond of $40,000; that Price, though personally enjoined, had, in contempt of the New Jersey court, indorsed the drafts and collected the proceeds. The letter inclosed is a certified copy of the order of the court, October 10, 1892, appointing the receiver. Counsel in behalf of the receiver made claim for the balance of $31,000 about to be paid Price under act of February 23, 1891.

The letter closed as follows: "I respectfully ask that comity be shown the chancellor of New Jersey, and that the draft to be issued in
7 payment of the balance due and payable to the order of Rodman M. Price be not delivered (or mailed) to said Price or his attorney, but be transmitted to the chancery court of the State of New Jersey, at Trenton, N. J., where said Price's rights will be abundantly protected, the receiver, of course, being an impartial officer of the court. I request that before action is taken (other than as asked for by the receiver) due notice may be given me that the receiver may be heard, to set forth the reasons why this disposition should be made of the drafts in question. Let me add that the Forrest judgment and interest now exceeds the sum of $60,000."

XIII.

On December 4, 1893, the chancery court of New Jersey, being informed by the receiver that Price, assisted by John C. Fay, esq., his attorney, was endeavoring to obtain payment at the Treasury of the balance, about $30,000, of this debt, and appropriate it for his own use, issued orders against Price, enjoining him from seeking to obtain payment of any part of that sum.

XIV.

On December 6, 1893, the receiver notified the Secretary of the Treasury, by letter, that a copy of injunction of December 4 had been served upon Price, and inclosed a copy of the same to the Secretary. He also invited the attention of the Secretary to the opinion of the Court of Claims in Redfield v. United States, in the twenty-seventh volume of reports of the court; informed him that he (the receiver) had applied to the supreme

court of the District of Columbia for an injunction, and asked that if that court should not grant relief he might have the benefit of the injunction of the New Jersey court now brought to the Secretary's notice. The receiver asked that if no relief were granted by the supreme court of the District that the Secretary send the drafts (otherwise to be handed to R. M. Price) to the chancellor of New Jersey, at Trenton.

XV.

The supreme court of the District of Columbia, December 19, 1893, in a proceeding for injunction upon bill of Borcherling, receiver, and Anna M. Forrest, administratrix, after personal service upon Price and Fay, enjoined Price from receiving, assigning, collecting, or indorsing to his own use, by himself or by attorney, any warrants or drafts from the Treasury of the United States in payment, in whole or in part, of any balance remaining unpaid under act of February 23, 1891, until the further order of the court; and it being the design of this order in no wise to interfere with the claim of any creditor of the said Rodman M. Price resident in this District against said Price, it is further ordered and decreed that, upon the representation of any person so claiming to be a creditor in this District and the establishment of such claim in a manner that shall satisfy the court of the bona fide existence of such claim, so much of said balance as shall be sufficient to cover any and all such claims so established shall be considered as exonerated from the effect of this decree.

8 XVI.

The supreme court of the District, on the 22d of December, 1893, passed the following order in the said suit:

"From the affidavits of John C. Fay and Jeremiah M. Wilson, claimants, and the assent and affidavit of the said Rodman M. Price, filed this day, it appearing to the satisfaction of the court that John C. Fay, Richard J. Bright, Frank S. Bright, Samuel Shellabarger, J. M. Wilson, and M. L. Woods, residents of the District of Columbia, appear to be bona fide creditors of the defendant, Rodman M. Price, and it appearing to the satisfaction of the court that as such they have bona fide claims for services rendered said Price to the extent of $7,900, it is ordered that the sum of seven thousand nine hundred dollars ($7,900) shall be exonerated from the effects of the decree passed herein on the 19th of December, instant, restraining and enjoining Rodman M. Price from receiving, etc., any warrants or drafts from the Treasury in payment of the whole or any part of the balance due him under the act of February 23, 1891; and said injunction order shall not operate to effect said sum of seven thousand nine hundred dollars."

XVII.

Counsel for the receiver, Friday, December 22, 1893, addressed the Assistant Secretary of the Treasury, setting forth the fact that the order of that day had been hastily acted upon, and explaining that the judge sent a verbal order to counsel to be in court at 1 o'clock; that he had already told Mr. Fay, attorney of Price, that he wanted copies of his

papers served two days in advance, in compliance with the rules; that at 12 o'clock he had been telegraphed for to go out of the city on account of illness in his family, and had sent a message to that effect to the judge. The letter also notified the Secretary that the receiver claimed that the money under the Redfield Case belonged to the receiver and not to Price. Counsel asked a reasonable delay, that he was obliged to leave Washington, but expected fully to return Saturday night, and expressed hope that "no action will be railroaded through to pay out any money to-morrow." He also notified the Treasury that a mandatory order had been issued against Price in New Jersey, and asked that before any action was taken to paying Price, that he (counsel) might be heard to show reason why the money had not passed to the receiver under the ruling of the Redfield Case, copy of which he inclosed.

XVIII.

The same day counsel for the receiver sent the following telegram to the Secretary of the Treasury: "Washington, D. C., December 22, 1893.—To Secretary of Treasury, Washington, D. C.: Please defer action in Price matter over to-morrow. The receiver notifies Treasury that he claims the money is his, not Price's, and will hold the United States responsible if paid Price or his attorney. Frank W. Hackett, attorney for receiver."

9

XIX.

On the same day, namely, Friday, December 22, 1893, the Acting Secretary of the Treasury indorsed a copy of the order of the supreme court of the District of Columbia of December 22, with a reference to the Second Comptroller to issue a certificate in favor of Rodman M. Price for $7,900, "the balance to be withheld pending an injunction against Price from receiving said balance."

XX.

On the same day, Friday, December 22, 1893, Second Comptroller certified that there were due and payable to Rodman M. Price $7,900; the balance, $23,100, to be withheld "pending an injunction against Price from recovering said balance now pending before the supreme court of the District of Columbia."

The draft on navy warrant No. 907, dated December 23, 1893, and payable to the order of Rodman M. Price, late purser, United States Navy, for $7,900, was paid at the Treasury December 23, 1893, by the Treasurer of the United States, said draft being indorsed "Rodman M. Price, late purser, United States Navy; John C. Fay."

XXI.

On the 25th of December, 1893, Borcherling, receiver, addressed a letter to the Secretary of the Treasury, claiming that on and after October 10, 1892, all property in the right to Price to receive from the United States the balance under the act approved February 19, 1881,

passed to him, the receiver. He reminded the Secretary that on the 27th of November, 1893, he had the honor of advising the Treasury of his appointment and inclosing a copy of the order of the chancellor; that Mr. Fay, attorney for Mr. Price, had full notice of the receivership as well as of the injunction of the court of chancery addressed to Price and his attorneys forbidding them from receiving any part of the $31,000; and that both Fay and Price had committed contempt of court. The receiver asked the Secretary to take the opinion of the Attorney-General upon the following questions:

1. Did the appointment of a receiver by the chancery court of New Jersey convey to that officer the property in the claim against the United States of Rodman M. Price?

2. Would payment to the receiver be a quittance to the United States in the premises?

3. Can the Secretary of the Treasury safely pay to Rodman M. Price or his heirs the money still unpaid under the act of February 19, 1891, now that the receiver claims that it should be paid over to him?

A similar letter was addressed by the receiver and his counsel to the Secretary of the Navy.

XXII.

On April 1, 1899, the Comptroller ordered the balance, $23,100, to be paid to Charles Borcherling, receiver, and the same was paid at the Treasury that day to Mr. Borcherling, the present claimant.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decide, as a conclusion of law, that the claimant is entitled to recover from the United States the sum of seven thousand and nine hundred dollars ($7,900).

10 IV.—*Opinion of the court.*

PEELLE, J., delivered the opinion of the court:

The findings present the question broadly stated as to whether the Secretary of the Treasury has the discretion in law to pay or not to pay a receiver, appointed by a State court, of the property and things in action of a creditor of the United States, for the purpose of reaching the assets or choses in action of such creditor for the payment of his debts; and if payment be made to such creditor by such officer after due notice of the appointment of such receiver and the order restraining such creditor from receiving money to his credit, whether a judgment can be recovered in this court in favor of the receiver for the amount so paid.

The material and substantial facts disclosed by the findings are these:

In 1857 Samuel Forrest recovered a judgment against Rodman M. Price in the supreme court of the State of New Jersey for $17,000.

In 1874, Forrest, having in the meantime died, and execution having been returned unsatisfied, his widow, as administratrix, revived the judgment by scire facias and in her bill prayed discovery, injunction, and the appointment of a receiver, to which answer was filed. No further proceedings were had therein until 1892, at which time said judgment with the interest accrued thereon amounted to over $60,000.

In February, 1891, the Congress enacted a law whereby the Secretary of the Treasury was authorized to settle and adjust the accounts of said Price, late purser of the United States Navy, and to pay to him, or his heirs, any sum found due thereon.

In the adjustment thus made there were found due to Price $76,204.08, of which $75,000 Price claimed had been advanced by him out of his private funds to A. M. Van Nostrand, his successor in office.

In the adjustment of said accounts $31,000 was withheld from Price to await the determination of a suit to be thereafter brought against Price as surety upon Van Nostrand's bond as acting purser of the United States Navy.

For the payment of the balance, $45,204.08, drafts were issued and made payable to Price; and in the meantime the chancery court issued an order restraining him from collecting or making any indorsement on the drafts referred to, of which order a certified copy was served on him. But notwithstanding said order he received from the assistant treasurer at Washington, D. C., payment of said drafts aggregating the sum of $45,204.08.

October 10, 1892, thereafter, the claimant herein was appointed by the chancery court receiver in said cause of the property and things in action belonging or due to or held in trust for Price, with authority to possess, receive, and sue for such property and things in action and the evidence thereof. The receiver gave bond in the sum of $40,000, as required by the court. A duly certified copy of the order of appointment was sent to the Secretary of the Treasury, about which there is no controversy.

Thereafter, an attachment was issued against Price for contempt of court in disobeying the order restraining him from indorsing the
11 drafts and receiving payment thereon, and he was fined $50 for contempt and directed to pay the residue of the money, $31,000, to the receiver, which proceedings were affirmed on appeal to the court of errors and appeals of the State of New Jersey.

The suit against Price as surety on Van Nostrand's bond was commenced, but was thereafter, prior to December 22, 1893, dismissed.

On December 4, 1893, the chancery court of New Jersey issued an order enjoining Price from seeking to obtain any part of said balance of $31,000 so remaining to his credit, of which order a duly certified copy was sent to the Secretary of the Treasury, after which the receiver made formal demand upon the Secretary for the payment of the money to him. The suit against Price as surety on the bond of Van Nostrand was commenced, but dismissed prior to December 22, 1893.

Thereafter, the supreme court of the District of Columbia in a proceeding instituted by the claimant as receiver and Anna M. Forrest, administratrix of the estate of Samuel Forrest, after personal service upon Price and his attorney, John C. Fay, enjoined Price from receiving, assigning, collecting, or indorsing to his own use, by himself or by his attorney, any warrants or drafts from the Treasurer of the United States in payment in whole or in part of any of said balance of $31,000 until the further order of the court, not, however, interfering with the claim of any creditor of Price resident within the District of Columbia.

December 22, 1893, in said supreme court, upon the affidavits of said Fay and Jeremiah M. Wilson, with the assent and affidavit of Price, it

was made to appear to the court that said parties and others named in the findings, residents of said District, were bona fide creditors of Price, and as such had claims against him aggregating $7,900, and in view thereof it was ordered by the court that the said sum be exonerated from the effect of the decree restraining Price from receiving any warrant or draft as aforesaid.

On the same day the order was modified the Comptroller certified a balance in Price's favor of $7,900, leaving $23,100 still to the credit of Price, which was withheld pending the injunction against Price in the supreme court of the District, as aforesaid.

December 23, 1893, in disregard of the restraining order of the chancery court of New Jersey, a draft was issued to Price, late purser of the United States Navy, for said sum of $7,900, and he indorsed the same to John C. Fay, to whom the money was paid, as appears from their indorsements on said draft set out in the findings.

December 25, 1893, the receiver addressed a letter to the Secretary in which, among other things, the Secretary was requested to take the opinion of the Attorney-General upon the questions involved, which was done; and thereafter, April 1, 1899, the Comptroller ordered the said balance of $23,100 to be paid to the claimant as receiver, which was done.

It will thus be seen that the particular question before the court is as to the right of the receiver to recover judgment for the $7,900 so paid to Fay on the draft issued to Price.

The claimant's contention is that the $31,000 standing on the books of the Treasury Department to the credit of Price was a personal asset within the State of New Jersey, and that as Price was domiciled in New Jersey, where he was personally served with process, the title to
12 the claim passed to the receiver by operation of the laws of New Jersey, and therefore entitle him to collect and receive from the United States Treasury the money thereon, to the exclusion of Price.

That contention the defendants deny, on the theory, substantially, that the laws of one sovereignty have no force by their own operation within the jurisdiction of another sovereignty.

In the case of Ogden v. Saunders (12 Wheat., 213), where the question was first distinctly presented to the Supreme Court, it was ruled that an insolvent or bankrupt law in one State did not affect the rights of creditors who were citizens of other States; and the principles thus announced were adhered to five years later in the cases of Boyle v. Zacharie (6 Pet., 348 and 635).

Following the rule thus announced and affirmed came the decision in 1854 in the well-known case of Booth v. Clark (17 Howard, 322), where it was held that a receiver appointed under a creditor's bill filed by the court of chancery of New York against a resident of that State did not vest in the receiver title to a claim in favor of such debtor against a foreign Government (Mexico).

The substance and effect of that decision is that the receiver so appointed was limited in his action to the territorial limits of that State; that the laws of New York, no matter what the decree of the court in respect to the authority of the receiver to sue elsewhere, did not extend to a foreign jurisdiction or to the jurisdiction of another State.

It is unquestionably the recognized and well-settled rule that a court

can not endow or confer upon its officers powers beyond its own jurisdiction. Bank of Augusta v. Earle (13 Pet., 519); Pennoyer v. Nebb (95 U. S., 714); Pana v. Bowler (107 U. S., 529); Hilton v. Guyot (159 U. S. R., 113 and 163).

The personal property of a debtor passes to the receiver as a general rule by operation of law without any act of transfer on the part of the debtor, but in respect of the title to property without the State of the receiver's appointment he "takes the property subject to every equity of foreign creditors and subject to all remedies of foreign countries." (Smith on Receivers, 109 et seq.)

However, the foregoing well-established rules do not prevent one State or sovereignty from recognizing the laws of another by that other rule known as comity between States or sovereignties and by which is meant "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws." (Hilton v. Guyot, supra, p. 164.)

While the obligation of the laws of one State or nation within the territory of another is derived from the voluntary consent of the latter, still, if not prejudicial to its interests or contrary or repugnant to its known policy, silence in respect of such rules or laws will warrant courts of justice in presuming the tacit adoption of them by their own Government; and in determining the rights of persons under such foreign laws the courts will adopt them for that purpose. (Story's Conflict of Laws, section 38.)

Rights thus determined become as fully settled as though adjudicated upon by the courts of such foreign jurisdiction.

13 Had the Secretary of the Treasury paid, or caused to be paid, to the receiver the $31,000 standing to the credit of Price, the receipt of the receiver therefor would have exonerated the Treasury and been as complete a defense to any claim thereafter made by Price as though it had been signed by him.

Hence, had the money been paid to the receiver after notice to the Secretary of his appointment, or to an administrator likewise appointed, the liability of the United States would thereby have been discharged. (Vaughn v. Northup, 15 Pet., 1.)

And this we say, though the restraining order issued by the supreme court of the District of Columbia was modified in respect of the creditors of Price, resident in the District, as such restraining order, as originally entered or as modified, did not in any way restrain the Secretary or any other officer of the Treasury Department from paying the money to the receiver, and payment to the receiver would have exonerated the United States from any payment to such creditors, even after the modification of the restraining order.

The only purpose or effect of the order was to restrain Price from receiving any part of the money; and when the order was modified, exonerating therefrom the sum of $7,900, due the creditors of Price resident within the District, the Secretary was not thereby relieved from whatever obligation may have been imposed upon him by reason of the previous notice of the claimant's appointment as receiver of the property

and things in action of Price, and of the order of the chancery court of New Jersey, still in force, restraining Price from collecting or receiving any draft or payment from the Treasury on account of said balance of $31,000.

The modification of the restraining order left Price and his creditors resident within said District the same as though no restraining order had been granted, and did not in any way authorize Price or his creditors to collect money from the Treasury. If such right existed it was independent of the restraining order and the modification thereof. So that the failure or refusal of the Secretary to pay the money to the receiver could not well have been founded upon any supposable risk of having to pay the money again.

His refusal to pay the receiver, therefore, must have been based upon his supposed right in law to pay or not to pay in the exercise of the discretion lodged in him; and having, as the head of an Executive Department, exercised his discretion by refusing to pay to the receiver, his action, the defendants contend, is conclusive upon the courts.

As between the States or as between the Federal Government and a foreign government there can be no question but that the principle for which the defendants contend would apply.

Do they, as between the Federal Government and a State? While the several States are territorially separate and distinct from each other, and possess sovereign rights and powers under the Constitution distinct from those of the Federal Government, they are nevertheless each an integral part thereof.

By virtue of the claimant's appointment by the chancery court of New Jersey, as the receiver of the personal property of Price for the payment of an unsatisfied judgment, he thereby became entitled to the pos-
14 session of all the personal property and choses in action of which Price was possessed or to which he was entitled at the time of his appointment, except such as may have been exempt from levy and sale for the payment of debts and subject to the rights of creditors of Price resident within a foreign jurisdiction as to any property located therein. In other words, as between Price and the receiver, the appointment divested Price of all right and title in and to his personal property and choses in action, wherever located, and clothed the receiver with the rights thus divested, subject to the future order of the court in respect of the rights of Price, after the payment of the judgment out of the property and choses in action so transferred.

Thus the receiver took the place of Price and thereby received "authority to possess, receive, and in his own name, as such receiver, sue for such property or things in action." (Revision Laws of N. J., 120.)

There is no controversy as to the authority and right of the receiver to possess himself of the personal property and choses in action of Price within the territorial jurisdiction of New Jersey, as such property passed to the receiver in virtue of his appointment under the adjudication of the courts of New Jersey, without formal assignment by the debtor. (Harrison v. Maxwell, 44 N. J., 316.)

In the able brief of the counsel for the defendants it is conceded that "when both debtor and creditor and the property of the debtor are within the reach of one sovereignty, there is little room for contention,"

but he contends "that the debt due from the United States to Price could not be transferred from Price to the claimant by the operation of the laws of New Jersey nor by any decree that the courts of New Jersey operating under such laws could make;" that such claim, he contends, "could only pass by virtue of the laws of the United States."

It becomes important, therefore, to inquire whether the claim of Price, a resident of New Jersey, as against the United States was an asset or chose in action as other personal property of the debtor within that State.

This question seems to be answered in the case of Vaughn v. Northup (15 Pet., 1, 6), where Mr. Justice Story, speaking for the court, said: "The debts due from the Government of the United States have no locality at the seat of Government. The United States, in their sovereign capacity, have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile." For the reason thus given it was held, in that case, that "the administrator of a creditor of the Government duly appointed in the State where he was domiciled at his death has full authority to receive payment and give a full discharge of the debt due to his intestate in any place where the Government may choose to pay it, whether it be at the seat of Government or at any other place where the public funds are deposited." And, furthermore, "that moneys so received constituted assets under that administration, for which he was accountable to the proper tribunals in Kentucky," where he was appointed.

Under that decision debts against "the United States have no locality at the seat of Government;" and if not there, then they have none in any particular locality and may be discharged wherever the Government may choose to pay them.

15 The claim due Price, therefore, was as much an asset in New Jersey as in the District of Columbia, and inasmuch as Price was domiciled in New Jersey, where he was personally served with process, such claim, at least as against the creditors of Price domiciled in the District of Columbia, passed to the receiver in virtue of his appointment, of which appointment such creditors had due notice.

Therefore, the payment of the money or any part thereof by the Secretary of the Treasury to Price or to such creditors was in derogation of the settled law of New Jersey. (Miller v. McKenzie, 2 Stewart, 291.) Did not the claimant, as receiver, therefore have the right to collect the money? The right of Price to receive and possess himself of the money ceased to exist when the receiver was appointed, and he was, in addition thereto, restrained from so doing, of all which the Secretary of the Treasury was duly notified. Hence the only one in law, at least as against Price and such creditors, entitled to collect the money was the receiver.

The right of a receiver, appointed by a State court, to maintain an action in this court was sustained in the case of Redfield v. The United States (27 C. Cls. R., 393), following the decision in the case of Erwin v. The United States (97 U. S. R., 392); Goodman v. Niblack (102 U. S. R., 556).

It may be said, however, that, inasmuch as the money sought to be

reached in that case had not been paid to the creditor in whose favor it stood on the books of the Treasury after the receiver was appointed, that therefore the court, in the exercise of its judicial discretion within the rule announced in the case of Hilton v. Guyot (supra), might show comity to the State of New York, where the receiver was appointed, by adopting her laws in determining the rights of the receiver in respect of such claim.

But the main question settled in that case, from which no appeal was taken, was that the claim against the United States was, in virtue of the appointment of the receiver, transferred to him by operation of law, and, if so, then it was by operation of the laws of the State of New York, where the receiver had been appointed, and he alone was entitled to receive the money thereon from the Treasury, as such transfer was not prohibited by the act of February 26, 1853 (10 Stat. L., 170, now Rev. Stat., sec. 3477). And when so paid to him the money became an asset in his hands for which he was accountable to the proper court in New York, as in the case of Vaughn v. Northup (supra).

Under section 1, Article XIV of the Constitution, the claimant was and is a citizen of the United States as well as of the State wherein he resides, but the circuit and district courts of the United States within the several States are neither probate courts nor courts for the settlement of the affairs of insolvent debtors, except in bankruptcy proceedings, and therefore many reasons exist why the Executive Departments, as well as the courts of the United States, should recognize as of binding force the laws of the several States in respect thereto.

In other words, the claimant, a citizen of the United States and of the State of New Jersey, wherein both he and Price reside and where the claim against the Government in favor of Price existed as a chose in action so far as it had local existence, was within the jurisdiction of the court of chancery in New Jersey, and that being so the claim in
16 favor of Price, as well as his right to collect the money thereon from the Treasury, were transferred in law to the receiver upon his appointment. Prior thereto the chose in action was in Price, and he could have maintained an action under the act of March 3, 1887 (24 Stat. L., 505), in the United States circuit court in New Jersey. Thereafter can it be questioned but that such right was in the receiver?

In the case of Crescent City Live Stock Company v. Butchers' Union Slaughter-House Company (120 U. S. R., 141, 146) the court cites with approval the case of Dupasseur v. Rochereau (21 Wall., 130, 135), where it was said: "No higher sanctity or effect can be claimed for the judgment of the circuit court of the United States rendered in such a case, under such circumstances, than is due to the judgments of the State courts in a like case and under similar circumstances."

See also the case of The Hancock National Bank v. Jonathan W. Farnum (175 U. S.,—), decided March 12, 1900, to the same effect.

The jurisdiction of the Court of Claims extends throughout the United States. "It issues writs to every part of the United States, and is specially authorized to enforce them." (10 Stat. L., p. 612, sec. 3.) (Jones & Brown's Case, 1 C. Cls. R., 383, 398.)

Since that decision it has been held, uniformly and invariably, in all questions relating to the validity of contracts, the title to property, the

distribution of estates, and the proper party to prosecute a case, that this court is to all intents and purposes sitting in the State where the cause of action arose or where the claim accrued.

Congress has supplied the accounting officers with effective means in such a case as this to protect the Government. As long ago as 1870 a case of conflicting claimants arose and was referred to this court by the Secretary of War under section 1063, Revised Statutes. It was held that the court in such a case must assume jurisdiction and determine the conflicting rights, rendering final judgment for the one claimant and final judgment against the other. (Bright and Hutchings Case, 6 C. Cls. R., 118; 8 id., 326.) Since this, similar references have been made by different heads of Executive Departments and by the Comptroller of the Treasury, and always with the effect of fully protecting the Government.

This view, we think, is sustained by the Supreme Court in the case of Price v. Forrest (173 U. S. R., 410, 422), wherein a controversy arose between the receiver, claimant herein, and the heirs of Price as to who was entitled to receive the money from the United States.

The heirs denied the jurisdiction of the chancery court of New Jersey to sequester the money in dispute in the Treasury, and insisted that whatever remained there belonged to them. The court decided that the receiver was entitled to the money and restrained the heirs of Price and their attorney, John C. Fay, to whom they had given a power of attorney to collect, and who was also a defendant in that case, as was the administrator of the estate of Price, from making any demand upon or application to the Government for the money or from receiving the same from the Treasury or any officer thereof. On appeal to the court of errors and appeals the decree was affirmed. (56 N. J. Eq.)

The decree thus affirmed was reviewed in the Supreme Court, Mr. Justice Harlan, delivering the opinion of the court, saying, in part: "The ultimate question in this case is whether the plaintiffs in error, 17 as heirs of Rodman M. Price, are entitled to receive from the United States the amount standing to the credit of the deceased on the books of the Treasury, and which represents the balance of a sum found in his lifetime, under the authority of a special act of Congress, to be due him upon an adjustment of his account as a purser in the Navy." Then, after stating the facts of the case as set forth in the findings herein, and reviewing the authorities construing section 3477, the court in relation thereto held that the transfer of the claim from Price "to the receiver was the act of the law, and whatever remained, whether of property or money, in his hands after satisfying the judgment," etc., was to be disposed of according to the laws of New Jersey. Furthermore, on page 423, it is said:

"As this court has said, the object of Congress by section 3477 was to protect the Government and not the claimant, and to prevent frauds upon the Treasury. (Bailey v. United States, 109 U. S., 432; Hobbs v. McLean, 117 U. S., 567; Freedman's Savings Co. v. Shepherd, 127 U. S., 494, 506.) There was no purpose to aid those who had claims for money against the United States in disregarding the just demands of their creditors. We perceive nothing in the words or object of the statute that prevents any court of competent jurisdiction as to subject-matter and parties from making such orders as may be necessary or appropriate

to prevent one who has a claim for money against the Government from withdrawing the proceeds of such claim from the reach of his creditors; provided such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the Government, nor in anywise obstruct any action that such officers may legally take under the statutes relating to the allowance or payment of claims against the United States. If a court, in an action against such claimant by one of his creditors, should, for the protection of the creditor, forbid the claimant from collecting his demand except through a receiver, who should hold the proceeds subject to be disposed of according to law, under the order of court, we are unable to say that such action would be inconsistent with section 3477. It may be that the officers charged with the duty of allowing or disallowing claims against the Government are not required to recognize a receiver of a claim appointed by a court, and may, if the claim be allowed, refuse to make payment, except as provided in section 3477."

That section, to prevent frauds against the Treasury, in substance provides that "all transfers and assignments made of any claim upon the United States," and all powers of attorney for receiving payment of such claim, shall be null and void unless "freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof." And yet in construing that section the court in the case of Baily and others v. The United States (109 U. S. R., 433, 439) held, in substance, that the statute was for the protection of the Government, and that payment made to an attorney in fact, constituted such by power of attorney executed before the allowance of a claim, was good as between the Government and such claimant if such power of attorney had not been revoked at the time of payment.

In the case of Erwin v. United States (supra), where cotton had been captured by the military forces of the United States and sold and
18 the proceeds paid into the Treasury, the claim of the owner thereto was held to be property which passed to his assignee in bankruptcy and that under the section of the statute referred to the passing of claims to heirs, devisees, or assignees in bankruptcy was not prohibited thereby; that the transfer of title by operation of law took the case out of the statute.

In the case of Goodman v. Niblack (supra) a voluntary assignment for the benefit of creditors was upheld, the court, at p. 561, saying: "There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment;" that such a transfer was not "within the evil which Congress sought to suppress by the act of 1853."

Referring again to the case of Price v. Forrest (supra), the court, quoting the opinion of the Second Comptroller to the effect that the chancery court of New Jersey could not compel payment to the receiver of the money in the Treasury to the credit of Price, says: "Even if it be true that the final order of the State court in relation to the money in question would not impose any legal duty upon the officers of the Treasury, it does not follow that the order of the court appointing the receiver would be null and void as between those who are parties to the cause and who are before the court."

Therefore, as between the parties to the suit who were before the court, the receiver was entitled to the money in the Treasury due Price. If so, can it be held that the Treasury officials, who had due notice not only of the appointment of a receiver but of the order restraining Price from collecting the money, may or may not disregard such order, in the absence of any claim against Price by way of offset?

This they did, and paid the money to Price, in disregard of the order of the chancery court of New Jersey. There being no purpose to aid those who have claims against the Government "in disregarding the just demand of their creditors," and as there is nothing to prevent "any court of competent jurisdiction as to subject-matter and parties from making such orders as may be necessary or appropriate to prevent one who has a claim for money against the Government from withdrawing the proceeds of such claim from the reach of his creditors," there is certainly no reason in law why a court in an action against such debtor by one of his creditors should not forbid such debtor "from collecting his demand except through a receiver, who should hold the proceeds subject to be disposed of according to law under the order of court" (Revision of N. J. Laws, 1877, sec. 26, p. 394); and such action, the court say, would not be inconsistent with section 3477.

If not inconsistent therewith, then it follows, it seems to us, that the transfer of the claim by operation of law takes the place of the voluntary transfer provided for in said section and clothes the receiver with the ultimate right to collect the money from the Treasury, as otherwise the purpose of the appointment of a receiver could be defeated by the refusal of the Treasury officials to recognize him as such. The transfer by operation of law, therefore, can only be made effective by payment of the money to the receiver by the Treasury, and in doing this the Government runs no risk, for payment to the receiver is as complete a discharge as though paid to the original creditor. (Goodman v. Niblack, supra.)

In reaching the conclusion we have, we are not unmindful that as between the States and as between the Federal Government and a foreign government a different rule prevails, and but for the decisions to which we have referred we should be inclined to follow the rule otherwise so well established.

If we are mistaken in our view as to the effect of the decisions upon which we have relied, an opportunity will be presented for a review thereof on appeal as to whether they do apply to the precise question in this case, which, so far as we are aware, has never been presented to the Supreme Court, i. e., the question as to whether the Treasury officials have the right in law to pay a creditor of the Government after the appointment by a State court, of competent jurisdiction, of a receiver of the property and things in action of such creditor, domiciled in such State, for the payment of his debts after due notice thereof.

Therefore, for the reasons we have given, we must hold that the claimant was entitled to receive from the Treasury the money which was due Price, and that payment thereof to Price did not discharge the defendants from their obligation to the receiver after notice of his appointment and of the order restraining Price from receiving the money, and he is therefore entitled to recover the sum of $7,900, for which amount judgment is ordered to be entered.

19 V.—*Judgment of the court.*

CHARLES BORCHERLING
vs.
THE UNITED STATES. } No. 21140.

At a Court of Claims held in the city of Washington on the second day of April, A. D. 1900, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, Charles Borcherling, do have and recover of and from the United States the sum of seven thousand nine hundred dollars ($7,900).

BY THE COURT.

20 VI.—*Application for and allowance of appeal.*

CHARLES BORCHERLING
vs.
THE UNITED STATES. } No. 21140.

From the judgment rendered in the above-entitled cause on the 2nd day of April, 1900, in favor of claimant, the defendants, by their Attorney-General, on the 16th day of April, 1900, make application for and give notice of an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Assistant Attorney-General.

Filed April 16, 1900.

Order.

The defendants' appeal in this case, filed April 16, 1900, is allowed.

CHARLES C. NOTT,
Chief Justice.

AUGUST 25, 1900.

21 In the Court of Claims.

CHARLES BORCHERLING, RECEIVER,
vs.
THE UNITED STATES. } No. 21140.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 28th day of August, A. D. 1900.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

22 (Indorsement on cover:) File, No. 17892. Court of Claims. Term, No. 407. The United States, appellant, vs. Charles Borcherling, receiver, &c. Filed August 30th, 1900.

O

No. 150.

By. of Atty. Gen.
for U. S.
Filed Jan. 8, 1902.

Office Supreme Court U. S.
FILED
JAN 8 1902
JAMES H. MCKENNEY,
Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
CHARLES BORCHERLING, RECEIVER, ETC. } No. 150.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

WILLIAM H. BUTTON,
Special Attorney.

LOUIS A. PRADT,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
CHARLES BORCHERLING, RECEIVER, ETC. } No. 150.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

Through certain transactions, which appear to be immaterial in this case, the officials of the Treasury Department adjusted an account on August 31, 1892, showing that the United States was indebted to one Rodman M. Price in the sum of $76,204.08.

One Samuel Forrest had recovered a judgment against said Price in the supreme court of New Jersey for $17,000 and costs in 1857, which judgment was revived by Anna M. Forrest, administratrix of his estate, by scire facias in 1874. In her bill she asked, among other things, for an injunction and the appointment of a receiver. Price and his wife personally appeared and answered in that suit.

On August 9, 1892, Anna M. Forrest filed a petition in chancery stating that such judgment was still unpaid and that no property had been found from which it could be collected; that about $45,000 was about to be paid to Price by the officers of the Treasury Department of the United States, and asked that a receiver of the drafts that were to be issued for such payment might be appointed, and that Price be ordered to indorse said drafts to the receiver so appointed.

On August 8, 1892, a rule to show cause was issued by the chancery court of New Jersey upon said petition, made returnable September 12, 1892, and Price was enjoined from indorsing the drafts referred to. This order and injunction was served on Price August 10, 1892, but, in violation thereof, he indorsed the drafts received from the United States to other parties. Such drafts amounted to something over $45,000. Thereafter, on October 10, 1892, Charles Borcherling was appointed by the chancery court of New Jersey receiver in said cause of all the property of said Price, and especially of said drafts, with authority to possess, receive, and sue for such property. Price was also ordered to deliver and convey to the receiver all such property and things in action, and especially said drafts, and was further enjoined from disposing of them if they were still in his control.

After these payments by the United States, which were made prior to the appointment of the receiver, there still remained in the Treasury about $31,000 due to said Price, and the Secretary of the Treasury

was notified of the appointment of such receiver and that he claimed title to said moneys. On December 4, 1893, the chancery court of New Jersey further enjoined Price from receiving or seeking to obtain payment of any part of said balance remaining in the Treasury. The Secretary of the Treasury was duly notified of this order.

On December 19, 1893, upon petition of Borcherling, receiver, and Anna M. Forrest, administratrix, and upon personal service upon Price and his attorney, Fay, the supreme court of the District of Columbia enjoined Price from receiving, asking for, collecting, or indorsing, either by himself or his attorney, any warrants or drafts from the Treasury of the United States in payment of the whole or any part of said balance. But it was ordered that said injunction should be modified so as not to cover any portion of said balance which might be due to creditors of said Price resident in the District of Columbia upon proof of the proper facts. Thereafter, the said supreme court of the District of Columbia on December 22, 1893, found, upon the representation of Fay and certain other parties, which representation was concurred in by Price, that $7,900 was due said Fay and said other parties as bona fide creditors of said Price, and released that amount from the operation of the injunction. Afterwards, and against the protest of the receiver, said sum of $7,900 was paid to said Fay by a draft made payable to Rodman M. Price and indorsed by Price through his attorney, Fay. The remainder of said money was afterwards paid to the receiver.

This suit was brought in the Court of Claims to recover said sum of $7,900 so paid, and the Court of Claims rendered a judgment in favor of said receiver for said amount (Record, p. 18).

ASSIGNMENT OF ERRORS.

First. The court erred in holding that said Borcherling, as receiver, could sue outside the jurisdiction of his appointment.

Second. The court erred in holding that the payment of said sum of $7,900 to Rodman M. Price, or through him to his creditors in the District of Columbia, was not a discharge to that extent of the amount the United States owed said Price.

Third. The court erred in holding that there was due to said Borcherling, as receiver, the sum of $7,900, or any other sum.

Fourth. The court erred in not dismissing the claimant's petition.

ARGUMENT.

The argument upon which the United States relies for a reversal of the judgment appealed from is to the following effect:

The United States is a sovereignty independent of the various States and has absolute control of the manner in which it shall pay its debts, the persons to whom they shall be paid, and, in fact, whether they shall be paid or sued upon at all.

This being so, it is incompetent for the State of New Jersey, through a statute or a decree of its courts, to

direct to whom such a debt shall be paid. The United States, through comity, may or may not recognize such a New Jersey statute or decree, as it may determine, but without such recognition such statute or decree is inoperative upon the disposition of such debt.

The United States does not recognize, through comity, the passing of title to a claim against it to a receiver appointed under a State statute or decree, and consequently the United States had the right to pay the debt to the original creditor and was discharged by such payment.

Furthermore, whenever such statutes or decrees of one sovereignty are recognized by another, such recognition is with the reservation that it shall be subject to the rights of other creditors within the latter sovereignty. Inasmuch as the creditors of Price in the District of Columbia are as much within the sovereignty of the United States as is the New Jersey creditor represented by the receiver, Borcherling, it follows that the payment of this money to the creditors of Price in the District of Columbia was proper, even if the United States should extend the comity contended for.

These propositions may be stated as follows:

> First. The manner in which the United States shall pay a debt it owes, to whom it shall be paid, whether it shall be paid at all, and whether it may be sued for, are matters entirely within the control of the United States and beyond the control of the laws and courts of New Jersey or of any of the other States.

Second. A statute of New Jersey or the decree of a New Jersey court acting under such a statute can have no effect beyond the sovereignty of New Jersey except at the pleasure of the sovereignty wherein such effect is sought.

Third. The United States does not recognize through comity a statute of a State or a decree of a State court transferring to a receiver title to or the right to possession of a debt owed by a person beyond the jurisdiction of such State, and so far as the United States is concerned such a receiver can sue only in the jurisdiction appointing him.

Fourth. Should the United States extend such comity it would still be subject to the rights of creditors within the sovereignty of the United States, and a payment to such creditors in the District of Columbia or elsewhere within the United States would be a valid discharge of the debt.

We will proceed to a discussion of these propositions.

First. The manner in which the United States shall pay a debt it owes, to whom it shall be paid, whether it shall be paid at all, and whether it may be sued for, are matters entirely within the control of the United States, and beyond the control of the laws and courts of New Jersey or of any of the other States.

Although the sovereignty of the United States is not foreign to that of the States in the strictest sense, yet it is a sovereignty that is entirely independent of the States in regard to those matters which are submitted to its control.

Among the matters so reposed in the Federal Government are those which relate to the manner in which the United States shall pay its debts, whether it shall pay them at all, or be sued upon them, and to whom it shall pay them.

United States v. *Clarke*, 8 Pet., 436.
Nicholl v. *United States*, 7 Wall., 122.
Carr v. *United States*, 98 U. S., 433.

In the last case, the court said:

> We consider it to be a fundamental principle that the Government can not be sued except by its own consent; certainly no State can pass a law which would have any validity for making the Government suable in its courts.

Whether the United States shall allow the ownership of any debt against it to pass to another than the original creditor, either by voluntary assignment or by operation of law, is likewise within its control. This is manifest from the decisions of this court in the following cases:

United States v. *Gillis*, 95 U. S., 407;
Erwin v. *United States*, 97 U. S., 392;
Goodman v. *Niblack*, 102 U. S., 556;
St. Paul and Duluth R. R. v. *United States*, 112 U. S., 733;
Ball v. *Halsell*, 161 U. S., 72;
Price v. *Forrest*, 173 U. S., 410.

All of the above cases involved the construction of section 3477, United States Revised Statutes, which provides that all assignments of claims against the United States prior to a certain stage of their adjudication shall be void.

All these cases recognized the proposition that it is perfectly competent for the United States to decide what kind of an assignment shall be valid and what kind shall be invalid, and the only contention involved in any of them was as to what assignments the United States intended to prohibit. This is tantamount to saying that the United States has the right to regulate the matter as it pleases, and that the only question open for discussion is what the United States has intended by the regulations it has adopted. The effect of the decisions is that the United States has not intended to prohibit certain assignments by operation of law: but they all carry the conviction that if such intention were to be found in the statute in question it would be conclusive.

These cases involving section 3477, United States Revised Statutes, are not cited because that section is thought to have any bearing on the questions involved in this record, but to show that this court has recognized the proposition that it is within the province of the United States to say what disposition shall be made of the debts it may owe. These cases all agree that a voluntary assignment of a debt owed by the United States, if made before the proper time, is void by virtue of this statute. What would this court say to a statute passed by the State of New Jersey or any other State to the effect that such an assignment should not be void but should pass the ownership to the assignee? The only possible answer is that such an attempt on the part of a State legislature to enter upon the ground committed to the keeping of the Federal

Government is unavailing. An attempt of a State to regulate the matter would be as ineffectual as an attempt to regulate interstate commerce, another matter committed to the keeping of the Federal Government.

If, then, the United States may say what kind of a voluntary assignment of claims against it may be valid, and what kind of assignments of such claims by operation of law may be valid, it follows that if the United States has determined that the appointment of a receiver by a State court acting under State laws shall not pass the ownership of a debt due from the United States, so that the United States may not pay its original creditor and thereby discharge the debt, neither the State of New Jersey nor any other State can effectively say that such ownership shall pass. It is for the United States to say whether or not it will take that position, and no State can gainsay its right to decide upon the question.

The reason why the State of New Jersey has no power to enact laws affecting this debt is not because the United States is not territorially present within the bounds of the State of New Jersey, but it is because the United States has to do with matters of such a character that they are beyond the reach of the laws of the State of New Jersey. The exemption from legislation by the State of New Jersey is founded upon the quality of the matters exempted rather than upon their location, and those matters are as completely without the control of the State of New Jersey as if they had their actual situs in the State of California or

some foreign country. This principle is recognized throughout our jurisprudence, witness matters relating to interstate commerce which, though they may have locality within certain States, yet are as effectively beyond the reach of the legislation of those States as if they had their locality elsewhere. The Federal courts, including the Court of Claims, although they may be deemed to be sitting in the State of New Jersey, yet are courts of another sovereignty. (*Pennoyer* v. *Neff*, 95 U. S., 714.)

Second. A statute of New Jersey or a decree of a New Jersey court acting under such a statute can have no effect beyond the sovereignty of New Jersey, except at the pleasure of the sovereignty wherein such effect is sought.

That the laws of one sovereignty have absolutely no force by their own operation within another sovereignty is a proposition that is abundantly supported by authority in this and in every other country.

In *Bank of Augusta* v. *Earle* (13 Pet., 519), Chief Justice Taney, in speaking of the power of a corporation to act outside the State of its creation, said:

> It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence.

The court went on to expound the doctrine of comity to the effect that other States might recognize such laws if they desired.

This principle is well exemplified in the case of insolvency laws. The insolvency laws of one State have no force as such in another.

Ogden v. *Saunders*, 12 Wheat., 213, pp. 358, 369.
Harrison v. *Sterry*, 5 Cranch., 298.
Boyle v. *Zacharie*, 6 Pet., 648.
Boyle v. *Zacharie*, 6 Pet., 635.
Baker v. *Wheaton*, 5 Mass., 509.

In *Suydam* v. *Broadnax* (14 Pet., 67) this court held that an insolvency statute of Alabama could not discharge a note given by the insolvent to citizens of New York. Mr. Justice Wayne said:

> A sovereign State and one of the States of the Union, if the latter were not restrained by constitutional prohibitions, might, in virtue of sovereignty, act upon the contract of its citizens, wherever made, and discharge them by denying a right of action upon them in its courts. But the validity of such contracts as were made out of the sovereignty or State would exist and continue everywhere else, according to the lex loci contractus.

In *Oakey* v. *Bennett* (11 How., 33) this court held that a decree in bankruptcy passed in 1843 in the United States district court for the eastern district of Louisiana did not pass to the assignee title to real estate in Texas, then a foreign State. Mr. Justice McLean said:

> A statutable conveyance of property can not strictly operate beyond the local jurisdiction.

> Any effect which may be given to it beyond this does not depend upon international law, but the principle of comity; and national comity does not require any government to give effect to such assignment when it shall impair the remedies or lessen the securities of its own citizens. And this is the prevailing doctrine in this country. A proceeding in rem against the property of a foreign bankrupt, under our local laws, may be maintained by creditors, notwithstanding the foreign assignment.

Baldwin v. *Hale* (1 Wall., 223) involved an insolvency statute of New York, and concerning it Mr. Justice Clifford said:

> Undoubtedly a State may pass a bankrupt or insolvent law under the conditions before mentioned, and such a law is operative and binding upon the citizens of the State, but we repeat what the court said in *Cook* v. *Moffat* (5 How., 308), that such laws "can have no effect on contracts made before their enactment or beyond their territory."

In *Cole* v. *Cunningham* (133 U. S., 107) it appeared that a Massachusetts court had enjoined a citizen of Massachusetts from prosecuting a claim in the courts of New York, through an assignee, on the ground that the person whose property was thus sought to be held had made an assignment in Massachusetts under the insolvency laws of that State. This court held that although the laws of Massachusetts had no effect outside of that State, yet it was proper for a court in the exercise of equity jurisdiction to enjoin a citizen within

ts jurisdiction from prosecuting suits in a foreign jurisdiction, acting, however, through jurisdiction over such person. Commenting upon the Massachusetts case of *Dehon* v. *Foster* (4 Allen, 545) Mr. Chief Justice Fuller cited with evident approval the position of the Massachusetts court in the following language:

> To the argument that the bill could not be maintained because the statutes of Massachusetts regulating the assignment and distribution of insolvent estates could have no extraterritorial effect or operation, the court answered that while it was true that the statutes of Massachusetts ex proprio vigore had no effect or operation in other States, it was also true that, by the comity of States and nations, the laws of one country are allowed to a certain extent to control the rights of persons and property in other countries, though not allowed to have any effect to the injury of the citizens of such other country.

He also said:

> If a State provides that no title shall pass to property within its borders except on certain conditions, such provision can not be overridden by the law of any other State which parties domiciled there may be held to have adopted.

In *Reynolds* v. *Adden* (136 U. S., 348), in speaking of the effect to be given in Louisiana to the insolvency laws of Massachusetts, Mr. Justice Bradley said:

> Every State exercises to a greater or less extent, as it seems expedient, the comity of giving effect to the insolvency proceedings of other

> States, except as it may be compelled to give them full effect by the Constitution of the United States.

In *Hilton* v. *Guyot* (159 U. S., 113) this court considered the effect to be given in this country to a judgment rendered under the laws of France. Mr. Justice Gray said:

> No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation depends upon what our greatest jurists have been content to call "the comity of the nations." Although the phrase has been often criticised, no satisfactory substitute has been suggested.
>
> "Comity," in the legal sense, is neither a matter of absolute obligation on the one hand nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard to the rights of its own citizens or of other persons who are under the protection of its laws.

In *Security Trust Company* v. *Dodd* (173 U. S., 624), it appeared that a Minnesota corporation, under statutes of that State, had made an assignment of all of its property. A citizen of New York afterwards attached certain assets of the insolvent corporation in

Massachusetts, and obtained the proceeds in such proceeding. The suit was brought in Minnesota to compel him to turn over such proceeds to the assignee. This court came to the conclusion that the Minnesota statutes were practically insolvency laws, and after stating that a *voluntary assignment* usually was effective to pass title to property in other States, Mr. Justice Brown, citing a great many cases, said:

> But the rule with respect to statutory assignments is somewhat different. While the authorities are not altogether harmonious, the prevailing American doctrine is, that conveyance under a State insolvent law operates only upon property within the territory of that State, and that, with respect to property in other States, it is given only such effect as the laws of such State permit; and that, in general, it must give way to claims of creditors pursuing their remedies there. It passes no title to real estate situated in another State. Nor, as to personal property, will the title acquired by it prevail against the rights of attaching creditors under the laws of the State where the property is actually situated.

And he further said:

> We are therefore of opinion that the statute of Minnesota was in substance and effect an insolvent law; was operative as to property in Massachusetts only so far as the courts of that State chose to respect it, and that so far as the plaintiff, as assignee of the D. D. Merrill Company, took title to such property, he took it subservient to the defendants' attachment.

The case of *Wood* v. *Parsons* (27 Mich., 159) involved the effect of a Canadian insolvency assignment on property in Michigan. The court said:

> The judgment or decree of that court could not affect his property in this State nor his right here to dispose of it. These conclusions seem to result from the universally admitted principle that the laws enacted by one sovereignty can have no force or effect, as laws, within the territories of another sovereignty, and that the courts of one sovereignty can not subject persons or property in another to the direct effect of its judgments, orders, or decrees.

The same principle that thus applies to insolvency and bankruptcy laws applies to statutes and decrees that attempt to transfer to a receiver property outside the jurisdiction. Such laws and decrees have no extrajurisdictional effect. In *Security Trust Company* v. *Dodd* (*supra*), this court approved the case of *Catlin* v. *Wilcox Silver Plate Company* (123 Ind., 477), in which the Indiana court said:

> Property in a foreign State that has passed from an assignor to an assignee by a voluntary deed, and not by proceedings *in invitum* by process of law, is distinguished from like property in the hands of a receiver by operation of law or by an assignment made under legal compulsion. Assignments of the latter class are held inoperative upon property not situated within the territory over which the laws that make or compel the debtor to make them have dominion.

In the same case this court also approved the case

of *Willetts* v. *Waite* (25 N. Y., 577), in which the New York court said, at page 584:

> By a sort of fiction, that which is known as personal property adheres to the person and has no fixed situs, and hence the maxim, *mobilia personam sequuntur;* and the law which governs the person of the owner will control as to the disposition or transmission of it. (Story Confl. Laws, sec. 378, 380, 381.) But not so as to devolution of title by act and operation of law, whether by forfeiture, bankruptcy, insolvency, or otherwise. In such case the transfer, depending upon positive law, is only operative where such law prevails and is obligatory; and as the laws of a State or government have no extraterritorial force, it follows that title to property in one State does not pass by virtue of a law of a foreign State, although it be the State and domicile of the owner. The law operates, if at all, *in rem*, and the State by whose legislation it is enacted, having no jurisdiction over property without its territorial limits, *it is entirely operative in respect to it.*

In the case of *Filkins* v. *Nunnemacher* (81 Wis., 91), the rights of a receiver appointed by a court of chancery are considered. The suit was brought to collect a debt owed by a person in Wisconsin. The court held that the appointment of a receiver in Illinois did not convey the title to such debt, and said:

> The conclusion is founded on reason and sound policy. The reason plainly is that a court can not endow its officials with powers

> beyond its own jurisdiction. The stream can not rise higher than the fountain head. Therefore, by the appointment in Illinois the plaintiff acquired absolutely no right or interest in Frederiksen's property in Wisconsin.

In the case of *State Bank at New Brunswick* v. *The First National Bank of Plainfield* (34 N. J. Eq., 450) the question of whether the appointment of a receiver by a New Jersey court of chancery passed title by operation of law to a debt owed by a person in a foreign jurisdiction was discussed. The court said:

> It is obvious that a transfer of title by operation of law can only be effected within the limits of the territory where the law prevails; and as the laws of a State have no extraterritorial force, it follows that the title to property located in one State can not be passed by force of the law of another.

In Smith on Receivers, a recent work on this subject, the American doctrine in regard to this question is summarized with this result, as stated on page 109:

> As to the disposition of personal property by operation of law, as in receiverships, the law being local has no extraterritorial effect, so far as the title is concerned. In such cases the assignee takes the property subject to every equity of foreign creditors, and subject to all remedies of foreign countries.

In all these cases the principle that personal property has its situs at the domicile of the owner was disregarded, and the fact that the debtor alone was out of the jurisdiction was held sufficient to make the

assignment of no force as far as the debt was concerned.

These authorities justify the conclusion that the decree of the New Jersey court appointing the receiver in this case had no operation except within the limits of the jurisdiction of that court.

In this case the United States is the debtor, and, as such debtor, inhabits a jurisdiction entirely independent of the State of New Jersey and its courts. No law that the State of New Jersey can pass will in any way affect the United States in this regard, nor will any decrees of a New Jersey court.

It follows from the above considerations that the title to the debt owed by the United States to Price could not pass to the plaintiff by virtue of the laws of New Jersey nor the decree of the New Jersey court.

This is the principle that has been disregarded in the opinion of the court below. That opinion seems to hold that the courts of New Jersey in enforcement of New Jersey laws can effect the assignment of a debt over which the laws of New Jersey have no jurisdiction.

It does not follow from the above considerations that one sovereignty may not recognize the laws of another if it wishes to do so; and as a matter of fact one sovereignty frequently does recognize the laws of another, but whether or not such recognition will be extended is entirely within the control of the sovereignty in question.

If such recognition is extended, then the laws of the foreign State do not operate by their own force, but

by force of the local law, which says that under the circumstances the foreign law shall be applied. The foreign law becomes part of the local law *pro hac vice.*

In the case of *Dalrymple* v. *Dalrymple* (2 Hagg. C., 45) the ecclesiastical court of England adjudicated upon the validity of a marriage contracted in Scotland, and used the following language concerning the case:

> Being entertained in an English court, it must be adjudicated according to English law applicable to such a case. But the only principle applicable to such a case by the law of England is that the validity of Miss Gordon's marriage rights must be tried by reference to the law of the country where, if they exist at all, they had their origin. Having furnished this principle, the law of England withdraws altogether, and leaves the legal question to the exclusive judgment of the law of Scotland.

In 1752 the same court used the following language in a similar case, *Scrimshire* v. *Scrimshire* (2 Hagg. C., 407):

> On this point I apprehend that it is the law of this country to take notice of the laws of France, or any foreign country, in determining upon marriages of this kind. The question being in substance this, whether by the law of this country marriage contracts are not to be deemed good or bad according to the laws of the country in which they are formed, and whether they are not to be construed by that law? If such be the law of this country, the rights of English subjects can not be said to be determined by the laws of France, but by those

> of their own country which sanction and adopt this rule of decision.

In *Caldwell* v. *Van Vlissengen* (9 Hare, 415) the court said:

> I take the rule to be universal that foreigners are in all cases subject to the laws of the country in which they may happen to be; and if in any case, when they are out of their own country, their rights are regulated and governed by their own laws, I take it not to be by force of those laws themselves, but by the law of the country in which they may be, adopting those laws as part of their own law for the purpose of determining such rights.

This comity will be extended or withheld as the self-interest, public policy, or generosity of the particular State may dictate. It is not a matter of obligation, but a matter of accommodation

In *Willitts* v. *Waite et al.* (25 New York, 577) the court said:

> A quasi effect may be given to the law as a matter of comity and interstate or national courtesy when the rights of creditors or bona fide purchasers or the interests of the State do not interfere, by allowing the foreign statutory or legal transferee to sue for it in the courts of the State in which the property is.

In *Bank of Augusta* v. *Earle* (13 Pet., 519, at p. 589) this court said:

> The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered;

and is inadmissible when contrary to its policy or prejudicial to its interests.

Further, the court defined it as the comity of the States, and not the comity of the courts (p. 589).

Third. The United States does not recognize through comity a statute of a State or a decree of a State court transferring to a receiver title to or the right to possession of a debt owed by a person beyond the jurisdiction of such State, and, so far as the United States is concerned, such receiver can sue only in the jurisdiction appointing him.

Acting upon the above principles, the various States have or have not recognized receiverships of other States as their pleasure or profit may have dictated. The United States, however, early decided that a receiver, statutory or otherwise, appointed in one political jurisdiction had no claim to recognition in any other, and this seems to be the law of this court.

In the case of *Booth* v. *Clark* (17 How., 322), decided in 1854, it appeared that one Camara had recovered a judgment in the supreme court of New York against Ferdinand Clark, and had taken out an execution which was returned *nulla bona*. Afterwards Camara filed a creditor's bill in the chancery court of New York, setting out his judgment and the return *nulla bona*, and praying that he might be aided to reach the equitable assets of Clark; asking for a discovery of such; an injunction against the disposal of them, and a receiver therefor. Upon this bill Booth was appointed receiver and Clark was enjoined from disposing of any of his property. It was not disputed but that the proceedings on this creditor's bill were regular. Some time later

*Booth, receiver, reported to the court that he had dis*covered no assets belonging to Clark except a claim upon Mexico, and asked leave to proceed to collect that claim, which leave was granted. Thereupon, in 1851, Booth filed his bill in the circuit court of the District of Columbia, reciting the proceedings in the New York courts; that Clark's property consisted entirely of the claim upon Mexico, and that such funds, then in the hands of the Secretary of the Treasury, belonged to him as receiver for the purposes of his appointment. Clark answered denying that the New York proceedings created any lien on this fund, and setting up the fact that after the appointment of Booth as receiver he, Clark, had been declared bankrupt in New Hampshire; that the claim against Mexico and the funds arising therefrom had passed to his assignee in bankruptcy, and they were not subject to the receiver's claim. The circuit court dismissed Booth's bill. An appeal was taken to this court. The question was whether the appointment of a receiver in New York worked a transfer of title to the fund in the hands of the Secretary of the Treasury at Washington so that it did not pass to the assignee in bankruptcy subsequently appointed under United States statutes. The court stated the question as follows:

> There is no dispute concerning the regularity or the binding operation of the judgment obtained by Camara against Clark, none in respect to the proceedings under the creditor's bill. The leading point in the case is the effect of the proceedings under the last to give the right

> to the receiver, by virtue of the lien which he claims upon the property of the debtor, to sue for and recover any part of it, legal or equitable, without the jurisdiction of the State of New York.

The court said that the receiver had urged upon the argument that by virtue of the decree of the New York court he was entitled officially to all the property of Clark, real, personal, or equitable, both within and without the State of New York; that the fund in the Treasury was a chose in action belonging to Clark when Booth was appointed receiver, and although not within the State of New York, still it followed the person of the owner and passed to the receiver because the owner was domiciled in New York, and further that the comity of nations would aid him as receiver in the assertion of his title in a foreign tribunal. In fact the argument was exactly the argument here presented in this case. The court, however, held that the New York cases cited did not maintain such propositions, nor did the cases in other jurisdictions, and held that the receivership proceedings in New York were absolutely without effect to pass the title to, or right to possession of, the fund in the hands of the Secretary of the Treasury. In coming to this conclusion the court said:

> We think that a receiver has never been recognized by a foreign tribunal as an actor in a suit. He is not within that comity which nations have permitted, after the manner of such nations as practice it, in respect to the judgments and decrees of foreign tribunals; for

all of them do not permit it, in the same manner and to the same extent, to make such comity international or a part of the laws of nations But it was said that receivers in New York are statutory officers, as assignees in bankruptcy are. That being so, he had, as assignees in bankruptcy have upon the property of the bankrupt, a lien upon the property of a judgment debtor, under an appointment in a creditor's bill. But that can not be so.

And further:

A receiver is appointed under a creditor's bill for one or more creditors, as the case may be, for their benefit, to the exclusion of all other creditors of the debtor, if there be any such, as there are in this case. Whether appointed as this receiver was, under the statute of New York, or under the rules and practice of chancery as they may be, his official relations to the court are the same. A statute appointment neither enlarges nor diminishes the limitations upon his action. His responsibilities are unaltered. Under either kind of appointment he has at most only a passive capacity in the most important part of what it may be necessary for him to do, until it has been called by the direction of the court into ability to act. He has no extraterritorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court or another jurisdiction, as the judgment creditor himself might have done, where

his debtor may be amenable to the tribunal which the creditor may seek.

The receivership in *Booth* v. *Clark* and the one in this case are parallel. There the receiver was appointed under a State statute by the court of chancery upon a bill asking for discovery and injunction. Here the receiver was appointed under the same kind of a statute and upon the same kind of a bill. There the injunction was granted; here, also, it was granted. There the receiver was an officer of the court with the right to the possession of the debtor's property; here, also, this receiver was a court officer with the same right. There the funds were in the hands of the United States; here, also, they are. There the United States was as much subject to the laws of New York as here to the laws of New Jersey. There the receiver had as much right to sue in the circuit court for the District of Columbia as here the receiver has to sue in the Court of Claims. Probably the only reason that suit was not brought against the United States was that the Court of Claims had not then been established. Acting upon this case, the Secretary of the Treasury was perfectly justified in paying the money to Price.

It will undoubtedly be contended that *Booth* v. *Clark* is a decision unfitted to the present condition of business in this country. It is true that some of the States have recognized receivers of other States to a greater or less extent. It is also true that in *Booth* v. *Clark* the recognition of the New York receivership was opposed by other creditors of Clark, and the case might

perhaps have been decided on the ground that for that reason it was not one in which comity should be extended. Such a holding might be in accord with the rulings of some of the State courts at the present day. But this was not the ground of the decision. The case was decided on the ground of lack of capacity of the receiver to do anything outside the State of New York in any event and the inability of New York laws to reach the assets. It is also to be remarked that the creditors who opposed the recognition of that receivership were not residents of the District of Columbia, but of other States. Those States which have recognized foreign receiverships have made such recognition subject to the rights of resident creditors and not of creditors resident in still a third State. Consequently, in reality the situation in *Booth* v. *Clark* was not such as to excuse recognition of the receivership because of creditors who should be protected.

The case of *Booth* v. *Clark* has not been reversed and has been followed continuously by the various Federal courts.

Olney v. *Tanner*, 10 Fed., 101;
Holmes v. *Sherwood*, 16 Fed., 725;
Mississippi Mills v. *Ranlett*, 19 Fed., 191;
Hazard v. *Durant*, 19 Fed., 471;
Young v. *Aronson*, 27 Fed., 241;
Atkins v. *Wabash Company*, 29 Fed., 161;
Philadelphia Coal Co. v. *Daube*, 71 Fed., 583;
Hale v. *Hardon*, 89 Fed., 283;
Baltimore Loan Asso. v. *Alderson*, 90 Fed., 142;
Coltrain v. *Templeton*, 106 Fed., 370;
Zacher v. *Fidelity Co.*, 106 Fed., 593.

It is true that some of the Federal courts have recognized the right of the receiver of a foreign corporation, appointed under various statutes, to sue outside the jurisdiction of his appointment upon the authority of *Relfe* v. *Rundle* (103 U. S., 222). In that case it appeared that a Missouri corporation had become insolvent, and under the Missouri statute the superintendent of the insurance department of that State became the successor to the corporation and vested with title to all its assets, with power to close up the affairs of the corporation. The corporation had been doing business in Louisiana, and when the superintendent undertook to engage in litigation there it was objected that he could not act outside the State of Missouri; but this court held that inasmuch as the State of Louisiana through comity had allowed a Missouri corporation to do business within its borders, it must extend that comity far enough to take the corporation as it existed; that a part of the existence of the corporation was its liability to pass into the hands of the superintendent of insurance, who, for all practical purposes, became the corporation itself. In other words, that under the circumstances the State of Louisiana had extended to the State of Missouri recognition of that kind of a successor in title. Concerning the superintendent, the court said:

> He was in fact the corporation itself for all the purposes of winding up its affairs.

And further:

> No State need allow the corporations of other States to do business within its jurisdiction

> unless it chooses, with perhaps the exception of commercial corporations, but if it does without limitation, express or implied, the corporation comes in as it has been created.

The superintendent of insurance was not a statutory receiver, but successor to the corporation itself, and held to have been recognized by the State of Louisiana as such when that State allowed the corporation to do business within its borders. Such reasoning could not apply to anything but a corporation; certainly not to a receiver of the property of an individual. Nevertheless, upon the authority of this case there has been some conflict between the decisions of the Federal courts in the various circuits as to the extraterritorial powers of certain classes of statutory receivers.

In *Hale* v. *Hardon* (89 Fed., 283) it was held that a receiver appointed under a Minnesota statute to enforce the statutory liability of stockholders for the benefit of creditors could not sue outside the jurisdiction appointing him.

Judge Putnam divided receivers into three classes: First, the true successors of corporations, who could sue out of the jurisdiction, under the authority of *Relfe* v. *Randle;* second, receivers who were successors in title by voluntary assignment or by statutes of insolvency, etc., concerning whom he thought the law was unsettled; and, third, ordinary receivers, who, under *Booth* v. *Clark*, could not sue out of the jurisdiction. He held that the receiver in question was of the third class and dismissed the bill.

This case was reversed in the circuit court of appeals in the first circuit (95 Fed., 747) on the authority of *Relfe* v. *Rundle*. Judge Colt delivered a dissenting opinion upholding the opinion of Judge Putnam below.

In the second circuit the same receiver brought another action, and it was said by the circuit court of appeals that he had no standing under *Booth* v. *Clark*.

Hale v. *Allinson* (106 Fed., 258).

In *Hale* v. *Hilliker* (109 Fed., 273) the same receiver brought another action, and it was held by the circuit court of the northern district of New York that the case was properly brought under the authority of *Hale* v. *Harden* (95 Fed., 747).

In *Wigton* v. *Bosler* (102 Fed., 70) the circuit court for the eastern district of Pennsylvania said that it felt as much at liberty to hold to the opinion of Judge Putnam of the circuit court and the dissenting opinion of Judge Colt of the circuit court of appeals of the first circuit as to the prevailing opinion of the two district judges in the latter court.

In *Kirtley* v. *Holmes* (107 Fed., 8) the circuit court of appeals for the sixth circuit allowed a receiver under an Ohio statute to enforce the statutory liability of stockholders in Kentucky under the authority of *Hale* v. *Hardon* (95 Fed., 747).

It will thus be seen that there is considerable conflict between the Federal courts in the various circuits as to the intention of this court in *Relfe* v. *Rundle*. It is therefore desirable to consider what kind of a receiver the defendant in error is.

The statutes and practice in New Jersey authorize the appointment of various kinds of receivers. This receiver, Borcherling, was appointed by the court of chancery upon a creditors' bill. The statutes of New Jersey provide that when an execution on a judgment for more than $100 has been returned unsatisfied the court of chancery may entertain a bill against the debtor for the discovery of any property or things in action belonging to him; may restrain the debtor from transferring any of his property; may cause the debtor to be examined in the premises; may enjoin third persons from paying money to the debtor which may be due him; and then proceeds:

> That the said examination of said debtor and witnesses shall be certified by said master to the said court of chancery, and thereupon it shall be lawful for the said chancellor to appoint a receiver *pendente lite* of the property and things in action belonging or due to or held in trust for said debtor as aforesaid, and thereby shall receive authority to possess, receive, and in his own name as such receiver sue for such property or things in action; and the said chancellor may order such judgment debtor to convey and deliver to such receiver all such property and rights in action and the evidence thereof; and said receiver shall in all respects be subject to the authority of the said chancellor, in accordance with the practice of the said court, and shall and may dispose of the said property and things in action in conformity with the final decree in said cause. (Revision N. J., pp. 120, 121.)

There is another class of receivers in New Jersey, appointed by the judges of certain common-law courts, in proceedings supplementary to execution. (Rev. N. J., pp. 393, 394.)

The courts of New Jersey have had occasion to contrast the power of the receivers appointed by the chancellor and the receivers appointed by the common-law judges under the above statutes. In *Miller* v. *Mackenzie* (2 Stewart, 291), the court of errors and appeals held that the receiver in supplementary proceedings appointed by the common-law judge did take title to debts due the execution debtor and could sue in another court for them, but the court pointed out the distinctions between such a receiver and a receiver appointed by the chancellor in the following language:

> After a critical examination of these statutory provisions, I am unable to concur in the view which denies to these officers the ability in question. There is undoubtedly a certain analogy between this class of receivers and that other class of persons who are appointed the custodians of property *pendente lite* by a court of equity, but such analogy can not be traced beyond the general characteristics and the purposes of the two officers. Receivers of both classes are called into existence for the purpose of holding property and turning it to account for the benefit of such persons as it may be ultimately decided are entitled to it. In these respects the two kinds of officials stand on the same footing; beyond this point anything like an exact resemblance ceases, and

> thenceforth they can not be regulated by precisely the same principles. One class is created by the court under its general authority, and the functions of the office are to be ascertained by a reference to ancient practice and usage. The other class is the creature of the statute, the measure of whose power is to be discovered in the legislative words and purpose, and it is obvious, therefore, that to regard the criterion by which the extent of the authority of these two official classes is to be graduated would, many times, lead to error.

In *Harrison* v. *Maxwell* (44 N. J. L., 316) Chief Justice Depue said concerning these two classes of receivers:

> We think it clear that whatever interest, direct or indirect, Cornelius Hanna, sr., had in the suit on the replevin bond passed to Crane as receiver, in virtue of his appointment. There is a distinction between a receiver appointed *pendente lite* in equity and a receiver appointed in supplementary proceedings. This distinction is pointed out by the chief justice in *Miller* v. *Mackenzie* (2 Stewart, 291).

There is still another class of receivers in New Jersey who are appointed in chancery to wind up insolvent corporations. The power of the court of chancery in this regard is defined in much the same language that is used in regard to receivers under creditors' bills. The statute states that a chancellor may appoint a receiver, who shall have power to demand and sue for and collect property of every

description, and to sell, convey, or assign said property, all under the order of the court. (Rev. N. J., p. 189.)

In *State Bank* v. *Bank of Plainfield* (34 N. J. Eq., 450), in speaking of this statute the court says:

> So, too, if the action in which a receiver is appointed is dismissed and the receiver discharged, no act of transfer is required to give or restore title to the corporation. By the dismissal of the action the court renounces its power over the property, and the corporation resumes possession, not in virtue of a new or restored title, but in virtue of a previous unchanged title.

From these cases it is apparent that whatever may be held as to statutory receivers in supplementary proceedings in New Jersey, it is the law of that State that receivers appointed in chancery do not take title to property, but only the right to the possession and disposition of it under the order of the court. One reason for this probably is the power of the court of chancery to compel a conveyance of the property by proceedings *in personam*, which power the common-law courts do not have. Whatever may be the reason, it is apparent that such a receiver is of the same sort as the one described in the cases of *Booth* v. *Clark* (*supra*) and *Union Bank of Chicago* v. *Kansas City Bank* (136 U. S., 223), where it is said:

> A receiver derives his authority from the act of the court appointing him and not from the act of the party at whose suggestion or by

> whose consent he is appointed, and the utmost effect of his appointment is to put the property from that time into his custody as an officer of the court for the benefit of the party ultimately proved to be entitled, but not to change the title or even the right of possession in the property.

The language of this court in *Booth* v. *Clark*, may indicate that the court was moved somewhat by the fact that the New York courts regarded the New York receiver as having no power to act outside of the State of New York. The same consideration applies to this receiver. It seems to be well recognized by the courts of New Jersey that the laws of that State and the decrees of its courts have no effect beyond the limits of that State. In the case of the *State Bank* v. *The Bank of Plainfield* (*supra*), the court said:

> The laws of other governments have no force beyond their territorial limits, and if permitted to operate in other States, it is upon the principle of comity, and only when neither the State nor its citizens would suffer inconvenience from the application of the foreign laws. (2 Kent's Com., 406.)

In the case of *Bullock* v. *Bullock* (51 N. J. Eq., 444), a bill was filed asking that a lien be declared upon property in New Jersey in accordance with a decree of alimony in a divorce suit entered in some other State. Concerning this request the court said:

> So far as I have been able to ascertain from a very thorough examination, the courts have

> taken this view of the case. I have not discovered an instance where the title to property located beyond the jurisdiction of the court in which the judgment or decree was pronounced has been allowed to be affected in any manner by the efforts of the courts pronouncing the judgment or decree, except as they have done so by proceeding against him in person.

The court cites many cases, and among them *Booth* v. *Clark* (*supra*).

It is, therefore, submitted that, like the courts of New York, the courts of New Jersey do not undertake to hold that a receiver appointed in that State acquires title to anything outside of the State.

Furthermore, this receiver is one for the benefit only of the creditors who brought the bill under which the receiver was appointed. Speaking of such a receiver in chancery, in *Whitney* v. *Robbins* (17 N. J. Eq., 360), the New Jersey court said:

> The relief given is for the creditor who pursues the statute; no others, either creditors at large or judgment creditors, are entitled to share with him the benefits of the proceedings until he is satisfied.

See also *Annin* v. *Annin* (9 C. E. Gr., 184).

The fact that the receiver is to take the proceeds from the Treasury of the United States, carry them to New Jersey, and appropriate them to the benefit of one of the creditors of Price to the exclusion of all others, is another circumstance which likens this receiver to the one discussed in *Booth* v. *Clark*.

All these circumstances of this receivership differentiate it from the receivership in the case of *Relfe* v. *Rundle*, and the few cases in the circuit court of appeals that recognize receivers under certain statutes in regard to corporations under the pretended authority of the case of *Relfe* v. *Rundle*.

This New Jersey receiver is exactly the kind of a receiver that this court discussed in *Booth* v. *Clark*, when it said that he had absolutely no power of official action beyond the jurisdiction appointing him, and it is submitted that such is the law of this court.

Fourth. Should the United States extend such comity, it would still be subject to the rights of creditors within the sovereignty of the United States, and a payment to such creditors in the District of Columbia or elsewhere within the United States would be a valid discharge of the debt.

It appears from this record (pp. 6 and 7) that the $7,900 sued for was not paid directly to Price, but was paid by draft made payable to the order of Price, and indorsed in Price's name by John C. Fay. This payment was brought about by the finding of the supreme court of the District of Columbia in a proceeding to which Price and Borcherling, receiver, were parties, to the effect that said Fay and certain other persons were bona fide creditors of Price to the extent of said $7,900, and that the said creditors were residents of the District of Columbia.

In those States in which a voluntary assignment or an assignment by operation of law effected in another State is recognized, such recognition has been made

subject to the rights always of creditors resident in the jurisdiction in which the suit is brought, and sometimes of creditors resident in still another jurisdiction. (*Security Trust Co.* v. *Dodd*, 173 U. S., 624.)

A debt due from the United States has no locality either at the seat of Government or in any of the States. The Government of the United States, which controls the disposition of such a debt, has no locality at any particular place.

> The United States in their sovereign capacity have no particular place of domicile, but possess in contemplation of the law an ubiquity throughout the Union, and the debts due by them are not to be treated like the debts of a private debtor, which constitute legal assets in his own domicile. (*Vaughn* v. *Northrop*, 15 Pet., 1.)

It must follow that Fay and the other creditors resident in the District of Columbia who got this money are as much within the sovereignty of the United States, and as much entitled to the protection of the United States in their rights as creditors of Price, as Mrs. Forrest, administratrix, a resident of New Jersey, can be. If this court thinks that the United States should recognize a receivership instituted under the authority of a sovereignty to which the United States is not subject, following the recent trend of decisions in some of the State courts, such holding should also adopt the limitation indicated. The result of this would be that such a receivership would not be recognized except subject to the rights

of other creditors whenever they may reside within the bounds of the United States, subject to the possible qualification that such creditors must have presented their claims in some legal form and opposed the recognition of such receivership. Here the creditors in the District of Columbia did so. Consequently it must follow that even if Borcherling as receiver had a right to collect this money from the United States as against Price, yet that right is subject to the payment that was made to Fay and the other creditors who asserted their claims in the District of Columbia and to the United States.

No good reason is perceived why the United States should seek to enable a New Jersey receiver to appropriate the funds of Price in its possession to the exclusive use of a New Jersey creditor and to the detriment of other creditors of Price elsewhere, who, it must be found from this record, are equally entitled to consideration. Such a proceeding would certainly not result in that equality of right which should be sought for by a court in administering the assets of an insolvent debtor.

It is respectfully submitted that the judgment of the Court of Claims should be reversed.

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JAMES H. McKENNEY,
Clerk

No. 150.

Brf. of Hackett & Parker for Appellee.

Filed Jan. 15, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 150.

THE UNITED STATES, Appellant,

v.

CHARLES BORCHERLING, Receiver, &c., Appellee.

BRIEF FOR APPELLEE.

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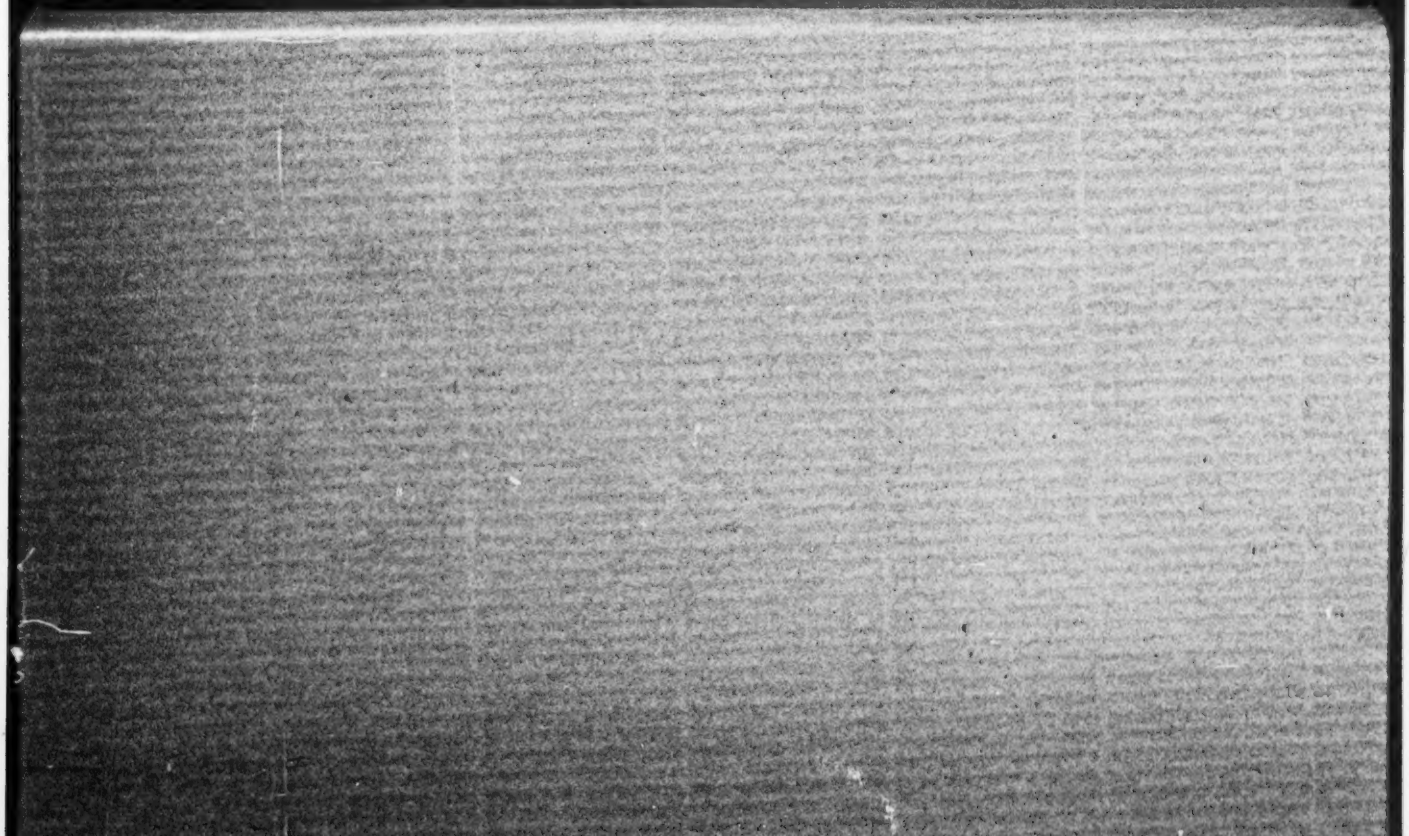

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES,
Appellant,
v.
CHARLES BORCHERLING,
Receiver, &c., Appellee.
No. 150.

APPELLEE'S BRIEF.

The question presented is:

A court of New Jersey, the domicil of Rodman M. Price, defendant in chancery proceedings, after personal service had upon him, appointed a receiver of all Price's personal estate: the receiver duly qualified and gave notice to the Secretary of the Treasury of the transfer to him under the New Jersey statute of all the choses in action of the debtor, Price, and requested the Secretary to pay to *him* (the receiver), a sum of money due Price on the books of the Treasury. Could the Secretary in disregard of the notice pay to Price in person the money, or a part thereof, and to that extent discharge the debt and free the United States from liability over to the receiver?

To decide this question it is necessary for us to examine:

1. The power of a receiver in supplementary proceedings under the statute of New Jersey, as respects his succeeding to the ownership of money due the debtor upon an account stated by the United States.

2. The duty of the officials of the United States to recognize the authority that a receiver at the debtor's domicil has to collect and discharge a debt primarily due from the United States to the person of whom he is receiver.

I.

ALL RIGHT AND TITLE IN PRICE TO COLLECT OF THE UNITED STATES THE MONEY FOUND DUE HIM PASSED TO THE RECEIVER. NO RIGHT REMAINED IN PRICE TO RECEIVE THE MONEY, OR TO GIVE LAWFUL QUITTANCE THEREFOR TO THE UNITED STATES.

1. The statute of New Jersey with respect to unsatisfied judgments at law provides that the court may compel a discovery by the debtor of his personal property, money or things in action; and that witnesses may be required to testify "concerning said matters"; that after the debtor's examination and that of the witnesses shall have been certified to the Chancellor, it shall be lawful for him—

"to appoint a receiver *pendente lite* of the property and things in action belonging or due or held in trust for said debtor as aforesaid, who thereby shall receive authority to possess, receive and in his own name, as such receiver, sue for such property or things in action." *Revision Laws of N. J., 120.*

A receiver appointed in proceedings supplementary to execution is vested with the legal title of the debtor to all property owned by him at that time, whether in the actual possession of the debtor, or in the possession of any one for his own use. *Smith on Receivers*, (1897) 259. No formal order of assignment is necessary to pass the title of the defendant to a receiver. The appointment vests in him the title to the property, except such as is exempt from levy and sale. *Ib.* 65.

In *Harrison* v. *Maxwell*, 44 N. J., 316, it is held that an equitable interest in a replevin bond passes to a receiver.

"With regard at least to the personal property, choses in action and equitable interests of the debtor, the title passes to the receiver in virtue of his appointment without any formal assignment by the debtor." Per DEPUE, J., *citing authorities.*

After the 10th of October, 1892, the claimant, Mr. Borcherling, under the statutory power exercised by the Court of Chancery, became as an officer of the court the owner of all the personal property of Price wherever situated.

The passing to a receiver of the right to be paid by the Treasury is not prohibited by sect. 3477 of the Revised Statutes, relative to assignments. *Price* v. *Forrest*, 173 U. S., 410.

2. The claim upon the Treasury was personal estate of Price, situated within the State of New Jersey. It passed by operation of law to the claimant, as effectively as any other personal property actually within the jurisdiction of the court. When the accounting officers of the Treasury had once fixed the amount due to Price, nothing further remained to be done but to pay over the money to the person legally entitled to receive it. The right to receive this money was a chose in action. Such a right can be said only by fiction of law to have locality. The authorities are in conflict with respect to the *situs* of a private debt, where questions have arisen between courts of different States. It may now, however, be declared to be settled that the *situs* of a claim against the United States is that of the domicil of the creditor.

Debts due from the United States have no locality at the seat of Government. *Vaughan* v. *Northrup*, 15 Peter, 1. Mr. Justice STORY says:

"The United States in their sovereign capacity have no particular place of domicil, but possess in contemplation of law an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicil."

The question here related to taking out administration based upon a claim that the decedent had against the United States.

At a later period (1883) attempt was made in the District

of Columbia by a creditor to obtain by mandamus the possession of certain drafts payable to a decedent, whose domicil at the date of death was Tennessee, but upon whose estate letters of administration had been granted by the Supreme Court of the District, upon the ground that the Treasury draft represented local assets in Washington. The court of the District ordered the writ of mandamus to issue. But the Supreme Court of the United States reversed the judgment, and held that a debt due from the United States was assets in Tennessee; that the officers of the Treasury may pay a debt due to the estate of a deceased person, either to the administrator appointed in the State of his domicil, or to an ancillary administrator duly appointed in the District of Columbia; and that the exercise of their discretion in this regard can not be controlled by writ of mandamus. *Wyman* v. *Halstead*, 109 U. S., 654.

All debts follow the person, not of the debtor in respect of the right of property, but of the creditor to whom due. Per NELSON J., *Williams* v. *Ellett*, 9 Wall., 743.

In a late case in the Circuit Court, Eastern District of Tennessee, CLARK J., discussing the question of the *situs* of a debt in respect to the right of garnishment, says:

"Does the debt follow the creditor and his domicil, or the debtor and his domicil? The legal title and right are clearly in the creditor, and by analogy to the principle that constructive possession is with the rightful owner, we would expect that the chose in action, particularly a debt, follows the person of the creditor. And such is the established rule. *Tappan* v. *Bank*, 19 Wall., 490; *Kirtland* v. *Hotchkiss*, 100 U. S., 491; *State Tax on Foreign Held Bonds*, 15 Wall., 300," citing many other authorities. *Central Trust Company* v. *Chattanooga R. R. Co.*, 68 Fed. Rep., 689.

"In construing the meaning of the words 'property in this State' we have held," say the Court in *Holbrook* v. *Ford*, 153 Ill., 645, "that since the only property right which there can be in a debt is the mere right to receive

payment of it, it is impossible that there can be anything of a tangible nature connected with such right which can occupy locality, so the property right must accompany and remain with the person of the owner of the debt, and therefore it cannot be in this State when the domicil of the owner is in another State. *Cooper* v. *Beers*, 143 Ill., 25."

These were private debts and not a debt due from the United States; but the authorities clearly indicate that ordinarily the *situs* of every description of indebtedness is properly to be regarded as being that of the domicil of the creditor. It is true that for some purposes the *situs* has been considered to exist at the domicil of the debtor, but this is allowed chiefly for the purpose of collection. It is a fiction resorted to in cases of garnishment and attachment. The locality so given is an additional *situs;* its conception does not exclude the theory that a *situs* exists likewise at the domicil of the creditor.

The subject of the *situs* of choses in action is well handled in an article by Hollis R. Bailey, in *The Harvard Law Review*, for June, 1897, vol. 11, pp. 95–113. The article refers to two previous articles by the same writer, "Assignment in Insolvency and its Effect Upon Persons Outside of the State." 7 *Ibid*, 281: "A Discharge in Insolvency and its Effect on Non-residents." 6 *Ibid*, 394. These articles present the latest authorities bearing on the subject. Their author treats of the "conflict of laws" that attends the theory of the *situs* of a debt, points out the confusion that exists among the authorities, and advances strong reasons why it ought to be done away with. It does not appear that in regard to private debts courts have ever gone to the length of denying that a *situs* does exist at the domicil of the creditor.

The Court of Claims (RICHARDSON, Chief Justice), have said "We are unable to see how a claim due from the United States can be a legal asset in the District of Columbia;" *King, Adm.*, v. *U. S.*, 27 Ct. Cl., 537; where it held that letters of administration granted by the Supreme Court

of the District of Columbia, on a petition that showed that the only alleged assets in the District consisted of a claim against the United States pending in the Court of Claims, were void for want of jurisdiction. The opinion in this case discusses the meaning of the decision in *Wyman* v. *Halstead*, and makes it clear that the Supreme Court did not intend to lay down the doctrine that the existence alone of a claim against the United States would be ground for issuing ancillary letters in the District of Columbia.

"Ancillary administration might be granted in the District of Columbia if the deceased had local assets, and if granted on that ground it would also embrace claims against the Government. The decision has no application to an administrator not *duly* appointed."

A late expression of views upon this subject by the Supreme Court of the United States will be found in *Cole* v. *Cunningham*, 133 *U. S.*, 128. Says FULLER, C. J.,

"Undoubtedly the fiction of the law that the domicil draws to it the personal estate of the owner, wherever it may happen to be, yields whenever it is necessary for the purposes of justice that the actual *situs* of the thing should be examined, and always yields where the laws and policy of the State where the property is located invalidate a transfer, even though valid by the law of the assignor's domicil."

It is apparent, therefore, that unless reasons appear to the contrary, we are justified in the assumption that the right of Price to this money constituted a personal asset in the State of New Jersey. Had Price died at a time when it was necessary to take out administration for the purpose of collecting this money, such administration would have been granted in New Jersey, and payment to the New Jersey Administator would have followed as a matter of course.

The "claim" being situated in New Jersey, passed by operation of law to Borcherling, assignee. By this we mean that it passed to Borcherling, not only as against Price, but as against the United States.

If, for purposes of administration upon the estate of a deceased creditor of the United States, the Treasury is considered to be in the State of that creditor's domicil (e. g., New Jersey, at the death of Price,) and not elsewhere, upon what principle can it be contended that a claim against the United States is elsewhere than at the domicil, when the creditor himself is present in a court of the domicil and submitting to its authority? Being present, and the claim being there; and, under the statute regulating assignments, no objection existing to the operation of law which affects to assign the claim—why does not all property in the claim pass *eo instanti* to the receiver? If it once so passes, it becomes the property of the receiver, so far as the United States is concerned; the receiver succeeds to all the rights of the insolvent debtor, and thus by operation of law the receiver becomes the rightful creditor of the United States. Mr. Borcherling became the legal creditor of the United States, in lieu of Price, October 10, 1892.

This must be so, unless for grave reasons the United States is to be excepted from the operation of the statute transferring a debtor's things in action to a receiver for a just distribution to his creditors. But no good reason can be conceived why the action of the Chancery Court of New Jersey upon the *status* of the personal property of Price, should not bind the officials of the Treasury. Those officials deal directly with a creditor of the United States. *He* may not assign his right; but a court of plenary jurisdiction clothed with statutory authority to that end may change the *status* of all his personal property, a claim against the United States included.

II.

THE TREASURY OFFICIALS SHOULD HAVE PAID TO THE RECEIVER ALL THAT HAD BEEN FOUND DUE TO PRICE.

All of Price's personal property had passed to the receiver. Notice had been given in ample season to the Treasury that

by operation of law Price was no longer entitled to collect and dispose of the money due upon this claim. It therefore became the plain duty of the Treasury officials to follow the legal effect of the action of the Chancery Court of New Jersey.

First, let us for a moment examine the grounds upon which it appears that the Treasury officials refused to listen to our protest against their paying to Price the money which he was not legally entitled to receive.

The Doctrine of the Want of Extra-Territorial Effect in Statutory Assignments.

The Assistant Secretary of the Treasury, who ordered payment to be made to Price, in the District of Columbia, of $7,900, apparently acted upon the theory that an assignment by operation of law in New Jersey was of no avail to pass property in the claim, because to recognize it would be in his opinion to give an extra-territorial effect to the action of a State court.

The objection that the appointment of Mr. Borcherling as a receiver had no extra-territorial effect, is not well taken, for the reason that the decided cases go no further than to indicate an unwillingness on the part of a State to recognize and enforce in its own courts the order of a court of another State appointing the receiver, so long as creditors of their own may be prejudiced thereby.

There has been contrariety of opinion, it is true, in the courts of the several States as to the effect of an assignment *in invitum*. The English rule is the logically correct one, viz: that a valid transfer of personal property, whether voluntary or under bankruptcy or insolvency proceedings, or in a case of a receivership, is valid everywhere, and will be enforced. The rule in this country, we admit, does not yet come up to the standard of that of England. As early as 1820, Chancellor Kent with a view of establishing the

English doctrine as the rule in New York, delivered an opinion to the effect that the result of an assignment by proceedings at law is, and ought to be, precisely that of a voluntary transfer, and that its full effect should be recognized everywhere. *Holmes* v. *Remsen*, 4 Johns. Ch., 460. But the able and well-directed efforts of this eminent jurist failed of their purpose.

The lack of speedy communication between distant parts of the Union in early days, and the influence of the idea then prevailing of State's rights, conspired to fix upon the jurisprudence of our State courts, a treatment of the subject of involuntary assignments neither liberal nor logical. A kind of State inter-territorial law grew up, founded upon an assumption that another State is assimilated to a foreign country. The courts have proceeded upon the idea of protecting their own citizens by refusing to recognize the binding force of a statutory assignment, so far as property within their own jurisdiction is concerned. They have not pronounced such an assignment void. The extent to which their decisions go is that a receiver appointed in another State shall not be permitted to avail himself of the process of the court, to the disadvantage of creditors of that jurisdiction. The underlying idea is well expressed by Mr. Justice NELSON, while speaking in a case of intestacy of the disposition of assets in a country other than that of the deceased:

"The difficulty does not lie in any defect of title to the possession, but in the limitation or qualification of the general principles in respect to personal property by the comity of nations founded upon the policy of the foreign country to protect the interests of its home creditors." *Wilkins* v. *Ellett* (1869), 9 Wall., 742.

The court of "another State" treats the assignment as something which may or may not be pronounced valid. If no creditors object, the assignment is recognized. In a

word, the court, in certain cases, *withholds a remedy*. The remedy is granted, however, where it does not prejudice local creditors.

What the court says to a foreign receiver is in effect as follows:

"You may not take property and remove it from this jurisdiction to satisfy general creditors, until after creditors who live here have had their chance to secure themselves. We do not admit that the statute of your State, under which property of the debtor has passed to you as receiver, can operate on property situated here,—at least, not until our own people have had opportunity to resort to such property for the satisfaction of their claims against the debtor."

What is termed "comity" between the States of this Union will be seen upon examination to be founded upon no other basis than that of expediency. There are no recognized and well-defined limits within which it is exercised.

The court, where the question of a foreign receivership comes up, is asked to apply a state of facts indisputably proved by the records of a sister State. It admits the creation of the receivership. It admits also that the personal property of the debtor has everywhere passed to the receiver, except so far as a portion of such property may be needed for the satisfaction of the claims of creditors within the State where it is actually found. The portion thus withheld is considered not as the absolute property of the debtor, unaffected by the receivership, but provisionally such, until the claims of home creditors are ascertained and satisfied. At the farthest, courts do not undertake to declare that an absolute property remains to the debtor within their jurisdiction. They only say that, for the purpose of aiding our own creditors, we shall treat this as if it were the property of the debtor subject to a lien. Obviously

this is nothing else than a doctrine of the remedy. It is not a determination of an absolute title.

It is the *creditor* within the State, be it remembered, whose rights are thus conserved and protected by the court. The debtor in these cases is a non-resident, and the court does not feel called upon to look out for him, or to protect his rights.

Let us suppose that A, living in the State of Virginia, had owed Price $500, and that the receiver had notified A to pay him, and not Price. Let us further suppose that there are no creditors of Price in Virginia, and that the receiver later brings suit in Virginia against A. A thereupon sets up in defense that he disregarded the notice and paid over the money to Price. Would this be a good defense? How can A call upon the courts of his State to help him?

Or, suppose he had paid the receiver, and subsequently that Price had come into Virginia and sued him for the debt, would not a plea of payment be a complete defense? We have found no case that extends the doctrine of a want of extra-territorial effect so far as to afford a defense to A in the circumstances first supposed.

But there is no need to examine the decisions in various jurisdictions based upon an alleged want of extra-territorial force in the judgments of the court of a sister State. They are numerous and conflicting. Summed up they amount to nothing more than an expression of a duty on the part of a court to protect "its own people." That an assignment of all the property of an insolvent debtor by the court of his domicil is without force beyond the limits of that particular State is a doctrine laid hold of in the administration of a remedy by the courts, and applied no further than to protect domestic or local creditors.

The Treasury Department, it is clear, has nothing whatever to do with protecting creditors; with granting or withholding remedies. This is a consideration that belongs

exclusively to the courts. The obligation imposed upon the Secretary of the Treasury with reference to paying debts of the United States is perfectly simple. He is to pay the legal creditor. This he must do without favor to any individual, or set of individuals. In paying the Price "claim," it was the duty of the Treasury officials to ascertain whether Price still continued to be the legal creditor of the United States. If he, in New Jersey, was no longer the legal creditor of the United States, because a court of the State where he lived had acted upon the *status* of his property, and conveyed it to the claimant, Borcherling, it is clear that he (Price) could not be such in the District of Columbia.

Nor could the Assistant Secretary of the Treasury properly consult the interest of any alleged creditors of Price living in the District of Columbia. It had never become a part of his official duty to consider creditors of Price, either in New Jersey, New York, in the District of Columbia, or anywhere else. The Treasury could take notice that by operation of law that which Price had owned as a claim against the United States had passed into the hands of a receiver, under an order affecting *all* of Price's property. Where did the Treasury Department acquire the right to pay a part of this money to Price, and the remainder to the receiver?

Booth v. *Clark.*

The Treasury officials may have been confirmed in their error by giving to the decision of the court in *Booth* v. *Clark* (17 How., 322), an effect that does not belong to it. The opinion in that case, containing as it does much that is *obiter*, had the effect to impress upon the practice of the Federal bench certain restrictive features, which, it is gratifying to observe, have in later years been gradually departed from. See remarks of Mr. Smith, the author of a well-considered work on Receivers (1897), page 166, as to the steady drifting away from the doctrine supposed to have been announced

in that opinion. Compare *Parsons* v. *Charter Oak Co.*, 31 Fed. Rep., 305.

Says John Lowell, formerly United States Circuit Judge:

"Some *dicta* in *Booth* v. *Clark* have been taken to mean that a receiver, or assignee, can not sue in the courts of a State, other than that of his appointment, but no such point was decided; and it is important to observe that the receiver in that case was one appointed under a bill in equity for the benefit of a single creditor, and might be considered to be a mere officer of the court appointing him. Receivers for the benefit of creditors generally, under proceedings for foreclosure or winding up, and assignees under a State insolvent law, have repeatedly maintained actions which have passed the ordeal of the Supreme Court, and on that point no question can now be raised." *Conflict of Laws as Applied to Assignments of Creditors*, 1 Harvard Law Review (1888), 260.

When the Chancery Court of New Jersey had appointed Mr. Borcherling receiver, it in effect created him an assignee in insolvency. Price, the debtor, had been given a day in court to disclose what, if any, property he possessed. The appointment of a receiver conclusively showed that Price had no property sufficient to pay his debts; or, at least, that he had declined to discover the existence of such property. In the orderly procedure of justice the decree of the Chancellor operated upon all the personal property of Price, wherever situated, and transferred the same to his assignee, Mr. Borcherling.

An Injunction Order and an Assignment by Operation of Law.

There is a distinction between an attempt by a court to assign a specific claim against the United States, thus in terms naming a new creditor which is virtually requiring the Secretary of the Treasury to pay the claim in question to some body other than the creditor himself—between such

an attempt, we say, and the operation of law, that acts generally upon all personal property of a debtor, wherever situated, in the nature of an assignment in insolvency. To the former supposed action, executive officers of the Government reply that they are not to be interfered with in the administration of their duties. In the latter case, however, the Treasury officials are just as amenable to the effect of the operation of the law as any one else. In the latter case a court is not directing them what to do. A statute has acted *in rem* upon the title to property. The devolution of title occurs much as it does when a court appoints a committee for a lunatic; or, a guardian for a spendthrift; or, an administrator of a decedent. A court with full power to act notifies the world that the title of the former owner has passed to another by operation of law, and all parties concerned take notice accordingly.

Unless the statutes of the United States, therefore, expressly or by obvious implication, required that the money in suit should have been paid to Price, himself and to no one else, the course pursued by the Assistant Secretary can not be upheld.

The Statutes Prescribing How Debts Shall be Paid.

Congress has legislated upon the subject, and expressed its will in the act of 1853, embraced in section 3,477, Revised Statutes, relating to assignments. No other or further injunction is laid upon the administrative officers of the Treasury than to observe the requirements of this section. All else is left to those principles that obtain in the usual course of business. That a payment must at times be made to another person than the original creditor of the Government, is apparent from the language of the statute relating to such Treasury drafts as have been outstanding for three years or more. They are

"to be carried to the credit of the parties in whose favor such certificates, drafts or checks were respectively issued, or *to the persons who are entitled to receive pay therefor;* and into an appropriation account to be denominated 'outstanding liabilities.'" Sec. 306, Rev. Stat.

Beyond these two provisions, so far as we have been able to discover, there are no positive directions in the statutes of the United States, to which Treasury officials can point, that relieve them from the duty, common to all debtors, of regarding the effect upon their creditors of an assignment by "operation of law."

Views of a Former First Comptroller.

No better exposition has been made of the powers of the Comptroller of the Treasury than that of the late Judge Lawrence, in his discussion (1884) of the "Authority Over, and Disposition of, Treasury Drafts," in what is known as Keyser's case. First *Comptroller's Decisions*, iv, pp. 261–353. We do not cite Lawrence's expression of views as entitled to any larger measure of authority, than as they indicate a position taken and firmly adhered to at that period by the First Comptroller himself, a man who was not backward in asserting for his office all that justly belonged to it.

A single extract will show what was the opinion of Mr. Comptroller Lawrence as to the locality of a claim, or the right to receive payment from the United States.

"The drafts—the papers evidences in the case—are at present in the District of Columbia, but the right to the money, which they represent, exists in Tennessee, under an assignment by operation of the law of the State; and such assignments have always been recognized in this Department. The money which is to be paid on them is not necessarily in the District. The debts could be paid as well by drafts on the Assistant Treasurer at New York or San Francisco."

Judge Lawrence argues that the rule of the common law transferring the right of action on claims against private debtors to an ancillary administrator at the *situs* of the debtor, and also the rule as to garnishee process, or creditors, bill, where the debtor is personally served, has no application to claims against the United States. Page 280. He fitly remarks of the United States, that,

"In paying its debts it has but one *duty*—to pay the rightful claimant whose rights are fixed by the laws of his domicil, by the laws of Congress, or by national executive common law. It has no duty to perform in securing local creditors of the claimant whom it pays." Page 298.

The Comptroller also insists that the duty of paying devolves upon executive officers, and that no court may interfere and direct how these duties shall be performed. The position is unquestionably sound. By "national executive common law" the Comptroller should be understood as meaning those doctrines of the common law that from time to time have been applied by the executive officers of the Government in the discharge of the duty of paying debts.

That is to say, the action of a court having jurisdiction of the person, which has the effect to work an assignment by operation of law, is, according to the Comptroller, to be respected by the Treasury Department. Such respect results in no sense from an interference by the court, nor is there a direction by the court to the executive officer. It is the natural regard paid to a *status* created by law, a *status* which receives the same recognition at the Treasury that it does everywhere else.

The Injunction Order of the Supreme Court of the District of Columbia

Although our claim to this money was perfectly well known at the Treasury, we took the additional precaution to notify the Assistant Secretary on Friday, December 22,

both by telegram and letter, that Mr. Borcherling the receiver would "hold the United States responsible," if the money were paid to Price or his attorney. (Rec. ~~18~~) Notwithstanding our protest, that officer ordered payment to be made, and a draft to the order of Price, bearing date December 23, was that day handed to Price in person at the Treasury. The draft Price cashed on that same day. (Rec. ~~21~~)

The Assistant Secretary may have acted upon the theory that the practice of the Treasury Department with respect to injunction orders, and that alone, furnished to him a correct guide. It seems to have been the custom of the Treasury to pay little or no regard to an injunction from a State court forbidding a creditor from receiving a draft. On the other hand, the Secretary of the Treasury has been in the habit of recognizing in a spirit of "comity" injunction orders of the Supreme Court of the District of Columbia; and upon notice received of the service of such order within the District upon a defendant creditor, the Secretary has usually held the draft until the rights of the parties to the litigation should subsequently be determined. It was because he had been advised that the Department accorded this effect to the orders of the Supreme Court of the District that Mr. Borcherling, in his capacity as a receiver of the Chancery Court of New Jersey, applied to the Supreme Court of the District for an injunction upon Price. He feared that, unless he took this step, the Treasury officials would pay Price on personal application at the Treasury, notwithstanding the proceedings had in New Jersey.

Upon the Court of the District enjoining Price and his attorney (Rec. ~~11~~) the Secretary held up the account. The Court, however, having on the 22d December, modified its order of the 19th December, and declared that the restraint of Price should not apply to the sum of $7,900, which appeared to be due to Price's creditors residing in

the District of Columbia. The Assistant Secretary appears to have conceived that this latter action of the Court should be treated much as if it were a permission to Price to receive that sum.

Without delay the papers were prepared, and the money paid over to Price, in spite of the fact that Mr. Borcherling as receiver was insisting that it belonged to him and not to Price, and had asked to be heard in opposition. The error on the part of the Assistant Secretary consisted in disregarding the effect of the payment to a receiver and of the transfer to him of all Price's property, including property in the money due on Price's account at the Treasury. The Supreme Court of the District of Columbia by its decree, could not have transferred the property in this money back to Price, even had it undertaken so to do; which it did not.

The proceedings in injunction, both in New Jersey and in the District of Columbia, were had for the purpose of affording a remedy to the receiver. They were in no sense a measure of the receiver's title and right to the assets of Price. They were incidental to the chancery proceedings which had passed the title to Price's property. Whatever may have been the extent to which the court of the District was willing to recognize a right on the part of the New Jersey receiver to obtain in the District the benefit of an injunction order, it was no part of the duty of the Assistant Secretary of the Treasury to be governed by the action of the District court. The remedy by injunction in the District was purely local and incidental. On the other hand, the assignment to the receiver of all the personal property of Price, including his claim against the United States, was of general effect. It could not safely be ignored.

In short, the Treasury officers appear to have been misled by dwelling exclusively upon the injunction proceedings in the District, and leaving out of sight the effect of the operation of law that had taken place through the action of the

New Jersey court. They had no right to hand this money over to Price in any event; nor does the circumstance that it might enable him to pay alleged creditors resident in the District of Columbia, afford any excuse to the officials for their action, since the money no longer belonged to Price, but had passed to the receiver who represented Price's creditors, and to whom alone payment could legally be made.

III.

The Appellant's Argument.

A statement of fact in appellant's brief needs correction.

At page 3 counsel say that the "Supreme Court of the District of Columbia, on December 22, 1893, found, upon the representation of Fay and certain other parties, which representation was concurred in by Price, that $7,900 was due said Fay and said other parties as *bona fide* creditors of said Price, and released that amount from the operation of the injunction. Afterwards, and against the protest of the receiver, said sum of $7,900 was paid to said Fay by a draft made payable to Rodman M. Price and endorsed by Price, through his attorney, Fay."

The Supreme Court of the District, it should be explained, did not find that $7,900 was due Fay and other parties. It found that this sum "appeared" to be due, which is quite another thing. There was no finding of fact, no hearing of the parties on an issue joined. The procedure consisted of nothing more than the filing of *ex parte* affidavits and action taken thereon in the enforced absence of counsel for the receiver (who received no notice under the rules, Rec. 6), upon which, as a *prima facie* showing, the court passed an order that, it appearing to the court that the parties were creditors, the sum of $7,900 be exonerated from the effect of the injunction.

The money was not paid to Fay. It was paid to Price (as counsel admit on page 26 of their brief) by handing

him a draft to his order for that amount, which draft, it seems, Price afterward endorsed to Fay.

Counsel cite and discuss many authorities as to the effect given to the office of a receiver by a court of another State than that in which the receiver has been created. All this is brought forward to sustain the theory that "the title to the debt owed by the United States to Price could not pass to the plaintiff by virtue of the laws of New Jersey nor the decree of the New Jersey court." *Appellant's brief*, page 19.

This court has held that so far as the receiver and Price were concerned the title did pass. *Price* v. *Forrest*, 173 U. S., 424.

If the Treasury officials, therefore, are not "affected" by the decree of the New Jersey court, it must be for some other reason than the appellant's contention that this was a debt of the United States which could not pass to the receiver.

How far the Secretary of the Treasury should have been governed by the action taken in the New Jersey court was left undecided in *Price* v. *Forrest*. It is the question now before this court.

Had the Treasury officials a right to ignore the action of the New Jersey court, and pay this money over to Price?

Counsel present no views as to the duty and power of the Secretary of the Treasury in the premises. They liken him to a court, and speak (page 38) of his "protecting" Fay and other creditors; but they neglect to inform us what are his powers and obligations in respect to paying debts of the United States. The fallacy underlying counsel's reasoning is, that they assume that the Treasury official (whose duty is executive and not judicial, who must see to it that he pays a creditor of the United States, or his legal representative), occupies a like attitude toward the court of New Jersey, when he is dealing with a New Jersey creditor, that

another State occupies toward New Jersey when a New Jersey receiver wishes to bring a suit in that other State.

The position of the Secretary is wholly unlike that of a court. He has nobody to protect, no home creditor to satisfy, no policy of lien by attachment or garnishment to sustain. Moreover, for some purposes the Secretary is transacting business in New Jersey, which of course a court of another State cannot do.

What does it signify to the Secretary of the Treasury that the courts of one State give only a qualified recognition to the appointment by a court of another State of a receiver? How does it concern the Secretary that the decisions on this point are hopelessly discordant? He has no occasion to ask what, for example, the courts of Ohio think of the action of the courts of New York. His duty is comprised in ascertaining the identity of the person to whom the United States owes money. If that person has died, the Secretary wants to know who is his executor or administrator; if the creditor has become a lunatic, the Secretary would like to know that his committee can safely be dealt with; if a court of competent jurisdiction has divested the creditor of his estate and put it into the hands of a receiver, the Secretary would learn if the appointment be duly and regularly made, so that he may safely pay the receiver.

Of what consequence is it that in some other jurisdiction, for local reasons, a court will not grant such receiver the privilege of bringing suit except under certain conditions? Moreover, why should the Secretary stay his hand and refuse to pay the receiver because he (the Secretary) "acts under a different sovereignty" from that under which the court appointed its statutory officers? The Secretary has a plain duty to perform. He must find out who it is that the United States owes. If the chancery court had power to divest the creditor of his estate and transfer it to a receiver (and this court says that power to this effect was lawfully exercised, and that property in the claim was

transferred, as between Price and the receiver) what further office has the Secretary than to pay the receiver, who has power to take the money and give a quittance therefor?

We say that it became the duty of the Secretary to pay the receiver. Mr. Borcherling held the title as against Price, and nothing prevented the Treasury from dealing with Mr. Borcherling. It is fanciful to argue that the New Jersey court cannot "affect" the Secretary of the Treasury, because he, as an official of the United States, "inhabits a jurisdiction entirely independent of the State of New Jersey and its courts."

The obligation of the Secretary rests upon other grounds than that of being or not being "within the jurisdiction of" the New Jersey court. The Treasury recognizes the receiver, because the court had personal jurisdiction of Price, and the power to determine the status of Price toward this debt of the United States. There is no valid reason existing for a refusal to recognize the receiver, and discredit to that extent the court of New Jersey. The United States has nothing to gain by such conduct, consequently the propriety of acting in harmony with the decree of the court asserts itself, to the extent that we may pronounce it the *duty* of the Secretary to conform to its purpose and meaning.

The rule may be stated thus: Where a State court of the domicil of a creditor of the United States proceeds under statutory authority to withdraw from that creditor all his property (including a claim against the United States), so that by operation of law that property passes over to a legal representative of the creditor, viz: a receiver, it is the duty of United States officials, upon being notified of the transfer, to refrain from doing anything to defeat the purpose of the court, unless a positive law of the United States requires them to disregard the action of the court in the premises.

An United States court sitting in the territory of New Jersey would, as a matter of course, recognize the receivership of Mr. Borcherling. The Court of Claims in this suit

recognizes it. It is hardly profitable to undertake divining upon what ground this attitude of United States courts is to be rested. A somewhat similar principle governs this court when it, in certain circumstances, follows the construction of a State statute by the highest court of that State. The obligation is not derogatory to the dignity of the United States court; nor does it proceed from any fancied efficacy of the State court to impose its views upon another and independent tribunal. It is simply a conformity to the dictates of common sense, which points out that confusion and no possible advantage would inevitably result from adopting a contrary course.

In like manner the Treasury officials must see that no good reason exists why the receiver at the domicil should not be regarded as the legal owner of the debt. The acting Secretary unfortunately fell into error while temporarily filling the office of head of the Department. Perhaps had this official taken more time for deliberation he would have declined to pay money over to Price, who, by taking it, brought himself into contempt of court. The act of the Assistant Secretary was unwarranted, and it did not discharge the debt.

IV.

THE RECEIVER NOT HAVING BEEN PAID, THE UNITED STATES OWE HIM THE MONEY.

It is a familiar principle of the law of assignments that the debtor upon being notified of a valid assignment, and asked by the assignee to pay the debt, can not discharge himself from liability by paying the debt, or a part of it, to the original creditor. *Burrill on Assignments* (3d ed.), 575.

Paying $7,900 to Price after the receiver had notified the Treasury that he (Borcherling) had the right to collect it, could not discharge the debt that was legally due to the receiver. It was equivalent to paying a person not entitled to receive the money. The United States may have the

right to recover the money back as paid under a mistake; but this action of the Treasury officials did not discharge the debt due Mr. Borcherling, the claimant.

We respectfully submit that the judgment of the Court of Claims should be affirmed.

FRANK W. HACKETT,
CORTLANDT PARKER,
For Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 150.

THE UNITED STATES

vs.

CHARLES BORCHERLING, RECEIVER.

ON APPEAL FROM THE COURT OF CLAIMS.

ADDITIONAL BRIEF FOR APPELLEE.

CASE.

Rodman M. Price, deceased, of whose property the appellee is Receiver, was domiciled in New Jersey, of which State he had been a citizen during all his life.

A suit was pending against him in Chancery of New Jersey, since the year 1874, brought upon a judgment of the Supreme Court of that State, for seventeen thousand dollars ($17,000) and costs, upon which interest had accumulated, so that, on the 8th day of August, 1892, it amounted to more than $60,000.

It was brought originally by Samuel Forrest, the plaintiff

in said judgment, a purser in the United States Navy, resident in Charlestown, Virginia. Mr. Forrest died. His widow became his administratrix; and succeeded her husband in the prosecution. She filed a creditor's bill, seeking discovery of assets belonging to the defendant; and their application to the payment of the judgment. Her efforts to find any were, for many years, futile.

An act of Congress was approved February 23, 1891, entitled "An act for the relief of Rodman M. Price." Its language is as follows: "Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that the Secretary of the Treasury of the United States be and he is hereby authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting as the agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14th, eighteen hundred and fifty; and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him, upon such adjustment.

"Approved February 23, 1891."

Acting under this statute, the Treasurer of the United States settled that the United States was indebted to Mr. Price in the sum of $76,400. The date of this finding was August 31, 1892.

Mrs. Forrest, hearing of this act, and of the action of the Treasury regarding it, filed her petition in the Chancery suit in New Jersey, setting forth the possession by Mr. Price of the right to the money mentioned; that he had paid nothing on the judgment, nor could any property be found whereof to make it; and she prayed that an injunction might issue, restraining and forbidding him from making any endorsement of any draft or other negotiable security of the United States which he might receive from the Treasury;

that a Receiver might be appointed, and that Price be ordered to endorse any such draft to said Receiver, immediately upon its receipt, to the end that the amount thereof might be disposed of according to law and the direction of the Court.

Upon this, the Court granted a rule, that Price show cause why the injunction prayed for should not issue, upon a day mentioned in it, to wit, the twelfth day of September following; and that, in the meantime, he, the said Price, should be restrained and enjoined from endorsing any draft or other negotiable security of the United States, which should come to his hands, or to the hands of any other person to his use referred to in the petition, or to any person whatever, other than said petitioner or her attorneys, until the further order of the Court.

This rule was duly served upon Price, on the 10th day of said August, and on the day named, September 12th, Price appeared, by counsel, before the Chancellor. At his application, adjournment took place to another day; the order forbidding such endorsement continued; and before such other date, said Price received and endorsed away four such drafts, amounting together to over $45,000. And thereupon, on the 10th day of October, 1892, the appellee, Charles Borcherling, was by said court duly appointed Receiver of the property and things in action belonging or due to or held in trust for said Price, at the time of issuing certain executions, in said complaint mentioned, to wit, on the 4th of August, 1892, and previously, and especially of said four drafts, with authority to possess, receive and in his own name as such Receiver, sue for such property or things in action, and, among other things, the said Price was thereby ordered to convey and deliver to said Receiver all such property and things in action and the evidence thereof, and especially forthwith to endorse and deliver said drafts respectively and each of them, to said Receiver.

The statute of New Jersey, under which this receivership was created, uses the following language:

> "It shall be lawful for the Chancellor to appoint a Receiver *pendente lite* of the property and things in action belonging or due to or held in trust for said debtor as aforesaid, who thereby shall receive authority to possess, receive and in his own name as such Receiver, sue for such property or things in action. And the said Chancellor may order said judgment debtor to convey and deliver to such Receiver all such property and rights in action and the evidence thereof, and said Receiver shall in all respects be subject to the authority of the said Chancellor in accordance with the practice of the said court and shall and may dispose of the said property and things in action in conformity with the final decree in said cause."

The Receiver gave bond in the sum of $40,000 (and filed his official oath), as required by the court; a duly certified copy of the order of appointment was immediately sent to the Secretary of the Treasury and received by him, about which there is no controversy.

November 27, 1893, the Receiver, through Mr. Hackett, gave the United States Treasury notice by letter and copy duly certified of the order (Case XII); and made a formal demand, in writing, upon the Treasury, that all moneys awarded to Price as aforesaid, and not already paid to him, be paid to him, the Receiver, as such.

The United States owed the debt. Its Treasurer was its trustee of the money, to pay it to its owner; that is, to Price, or his legal assigns. This order and these notices told him that Borcherling was the legal assignee in his State; and, December 6, 1893, the Secretary of the Treasury was notified by the Receiver of the injunction which had been served on Price, dated December 4, 1893, by the Court of Chancery of New Jersey (Case Part XIII, XIV). This injunction forbade Price and his attorney, Mr. John C. Fay, from seeking to

obtain any part of this money. Notwithstanding, December 23, 1893, the Treasurer paid Mr. Price himself, by draft, $7,900, which draft Price endorsed to Mr. Fay. It is for payment to the Receiver of that sum that this claim against the United States has been brought:—the payment made being illegal, and the Treasurer having been so informed, and notified not to make it.

Certainly the United States is not discharged from a debt due to one man by paying it to another, especially when told not to do it. We sue for our debt. There was in the Treasury during the period reviewed, and after Price's breach of the command of the Chancery, by the endorsement away and use of the four drafts, thus committing a contempt for which, long after, he was punished, the sum of about $30,000, of which this $7,900 was part. Our claim in New Jersey Chancery, was for all this money. The Receiver's right was opposed only on one ground, *i. e.*, that the assignment to Borcherling was not by Price himself; and was not in the form required by the Statutes of the United States, (Sec. 3.477.)

The Court of Chancery of New Jersey, and the Court of Appeals in that State, and this Court, in the case of *Price* v. *Forrest*, 173 U. S., 410, all held that the transfer being an act of, and by virtue of, the law in the State of Price's domicile, the United States Statute had no application; that Borcherling was the owner of the claim; entitled to receive it in his official capacity, under the orders of the Court from which he received his appointment. It seems idle, considering that, to dispute Mr. Borcherling's right to this $7,900, which formed part of the sum, the ownership of which these courts adjudicated.

If the $23,100 left in the Treasury after paying the $7,900, ~~wrongfully~~ rightfully came to the Receiver, because the Supreme Court said it belonged to him, was not the ownership of the rest of the $30,000 in the Treasury likewise adjudicated?

Suppose Price had assigned the debt with the statutory

formalities; and the Treasury had then, after notice of the assignment, paid it over to any one else than the assignee, the United States would evidently have paid in their own wrong. What difference—if it be true that the Courts of New Jersey and the Supreme Court of the United States have all asserted this assignment by operation of law to be as effective as if by statutory form? What was the duty of the Treasury? The case of *Vaughn* v. *Northrup*, 15 Peters, 1, says that, in case of a claim due by the United States to an intestate, payment to his administrator appointed in the State of his domicile is right, and discharges the debt. Such claims are assets, having their *situs* in that State, and not in the district, or elsewhere; nor can the administrator be made responsible as such for the money he received elsewhere than where he got his letters. Names of officers are of little moment. An administrator is a receiver, with a different title. Administrators and receivers are both appointed by Courts—each becomes owner of property, in trust to obey the direction of the court; each becomes the sole owner of property in the domicile of the intestate, or of the insolvent judgment debtor; the debt due the intestate has its *situs* there. The language of Judge Story, on pages 6 and 7 of the case in 15th Peters, cited, runs thus:

> "It has become an established doctrine that an administrator appointed in one State cannot, in his official capacity, sue for any debts due unto his intestate, in the Courts of another State; and that he is not liable to be sued in that capacity in the Courts of the latter by any creditor, for any debts due there by his intestate. But it has been suggested that the present case is distinguishable; because the assets sought to be distributed were not collected in Kentucky; but were received as a debt due from the government at the Treasury at Washington; and so constituted local assets in this district. We cannot yield our consent to the correctness of this argument. The debts due from the United States have no locality at the seat of Government. The United States, in

their sovereign capacity, have no particular place of domicile; but possess, in contemplation of law, a ubiquity throughout the Union; and the debts due by them are not treated like the debts of a private debtor, which constitute local assets in his own domicile.

"On the contrary, the administrator of a creditor of the Government, duly appointed in the State where he was domiciled at his death, has full authority to receive payment and give a full discharge of the debts due to his intestate in any place, where the government may choose to pay it, whether it be at the seat of Government, or at any other place where the public funds are deposited.

"If any other doctrine were to be recognized, the consequence would be that before the personal representative of any deceased creditor, belonging to any State in the Union, would be entitled to receive payment of any debt due by the Government, he would be compellable to take letters of administration in this district, for the due administration of such assets. Such a doctrine has never yet been sanctioned by any practice of the Government, and would be full of public as well as private inconvenience. It has not, in our judgment, any just foundation in the principles of law. We think that Northrup, under the letters of administration taken out in Kentucky, was fully authorized to receive the debt due from the Government to his intestate."

Further language in the opinion strengthens these views.

It seems to us that this case, thus largely cited, decides the present one. Kentucky was the domicile of the intestate and of the administration and administrator. The Court decided that it was through this officer, created in the State of domicile, that a debt due to the intestate from the United States should be at once paid by the United States Treasurer. This, because the administrator *owned* the debt whose *situs* as property, was in Kentucky. And the Court states the distinction between the

action to be taken in the District of Columbia to collect a debt due a Kentucky intestate, by a citizen of the District, from a debt due by the Government itself; the ground being that ubiquity of the Government, which makes it present everywhere to pay its debts, though fixing the District as the place of doing so.

We do not say that the Treasurer was censurable, there being litigation as to the validity of the title made through the receivership, in delaying payment to Mr. Borcherling. But, when he paid any part of the money claimed to have passed under this title, to Mr. Price, he paid in his own wrong; and being the agent of the United States, the wrong must be righted by payment to the right owner.

In the case cited, the Treasurer refused payment; otherwise than to the administrator appointed in the domicile.

The case of *Wyman* v. *Halstead*, 109 U. S., 1068, is even more forcible as illustrating the duty of the Treasury in this case. Wyman, Treasurer of the United States, residing in Washington, D. C., issued three drafts; one to J. J. Pulliam, executor of J. M. Pulliam, or order; two payable to the latter person individually, or order. The three drafts were delivered to Halstead on account of the payees. The executor died. Halstead had the drafts in his possession. He took out administration on the assets of the two Pulliams, in the District of Columbia. Their domicile was in Tennessee. One Keyser sued Halstead, as administrator, for distribution, and obtained a decree in the District, ordering Halstead to endorse and collect the drafts and make distribution of the proceeds. Halstead obeyed this decree, endorsed the drafts, and demanded payment of them from Wyman, still Treasurer, and in funds. Wyman refused to pay them without the endorsement of administrators appointed in Tennessee, the domicil State. The District Court, on Halstead's petition, ordered a mandamus to Wyman to compel payment; and he brought the ques-

tion thus raised, by writ of error into the Supreme Court of the United States.

That Court reversed the decree for mandamus, holding the course of the Treasurer to be right, notwithstanding he had had the order of the Court in the District; because the property in the money was in the Tennessee administrator if appointed, or whenever appointed, and the District administrator had no right in it. The money was assets where the creditor lived, not in Washington, although the money was on deposit there, in the Treasury, to pay the drafts in dispute.

Now, it is repeated that the administrator has right through the law of the State where he is appointed; so has a receiver. The money due by the United States to a creditor has its *situs* where that creditor is domiciled. It has none in Washington. The Treasury there is the place to pay it; but the ownership of it is in the administrator appointed by the State. So the then Treasurer held the money for the Tennessee administrator, despite the decree of a Court here in the District requiring him to pay it here, and to pay it to an administrator appointed here.

Contrast his action with that of the Treasury in this case, which, after notice, pays over this sum, because the District Court says, "We will not prevent you." That is the full effect of that Court's action; there was no direction that it was right to do it. The Court had recognized the right of the Receiver, and granted an injunction preventing paying to Price; but then said, "Creditors resident here, filing affidavits from which it appears they have *bona fide* claims for services to the extent of $7,900, the injunction order should not operate to affect that sum."

The injunction only restrained Price from receiving; it did not enjoin the Treasury from paying. That could not be done. He was the representative of the United States. The evident expectation of the Court was that in some jurisdiction, at some future time, in proper manner, with notice

to both parties the rights claimed honestly by creditors might be discussed and then Price might receive or not, according to the Court's opinion.

What does Price do but hasten and get this sum from the Treasury. If the mandamus of the Court in the Wyman case could lawfully be disregarded, as the Treasurer then did, and the Supreme Court of the United States approved, how much more should the Treasury in the present case have adhered to the doctrine that this was Jersey business, and for Jersey courts, when all the Court said was, "We will not interfere, take your own course."

The case reviewed, and many others, establish that "the United States, in their sovereign capacity, have no particular place of domicile, but possess, in contemplation of law, a ubiquity throughout the Union." Does not this ubiquity destroy the doctrine grafted upon the doctrine of comity more properly called, as relates to States in America, the doctrine of nationality, that each State, though it gives effect to receiverships and such like trusts for creditors, created by the laws and the judicial decisions of other States, will first pay, out of assets legally existing in them, but found in it, the debts due to their own citizens? Is not this especially true as regards debts due by the United States, and payable at Washington, to parties domiciled elsewhere? Can foreign attachment garnishee debts due by the United States to parties living abroad? Can the debt due by the United States *to* an insolvent debtor discharged in New Jersey under its insolvent laws be seized in the District to satisfy a creditor there? This well-settled doctrine of ubiquity makes the United States resident of every State. Can a resident of New Jersey, owing a resident of New Jersey, be the subject of this exception to the rule of comity? That is the case. The United States, which owes this debt, is a resident of New Jersey, as well as of every other State.

If a creditor resident in the District can have the *choses in action* of his debtor domiciled elsewhere, and though a

Receiver there has been appointed by Chancery, applied to the satisfaction of his debt, he must seek and obtain the intervention of a court. The debtor cannot himself decide the question of right, when it is an exception to the general law of comity, and when he is warned by the Receiver not to do it; but to pay him, as assignee of the debt. That right must be established by a court—the Executive cannot lawfully exercise it—and on proof—with the presence, and right of contention of both parties. In this case, no court said "no," and no court said "aye." It simply would not interfere; and it came to the conclusion not to interfere on *ex parte* affidavits of the parties interested, without notice of the inquiry or the question to the Receiver or his representative. It made the payment to the party who owed creditors the money, not to the creditors themselves. Did he owe them? Was the large sum paid their right? For what services? As compensation for lobbying a bill through Congress? In New Jersey, that forms no consideration for indebtedness; and we suppose such is the case everywhere, in the presence of so much well known legislative corruption. The case shows $13,500 paid before in the hands of Mr. Fay, through a draft which was to be kept unendorsed to meet an alleged lien for services, until further order (Case VI.) Was the sum of these two ($21,400) really due? Price endorsed both drafts to Fay. Was it for his services? All these were pertinent questions. All to be decided by the will of the Treasury! As if the Executive were constitutionally capable of judicial action!

We pause to ask whether the Court can doubt that the Treasury was defrauded. But not by us—in spite of us—begging the Treasurer only to wait, and let the Court settle our right; and proving, at the same time, by copy of an injunction (P. XII, XIV, XV), that Price and Fay were a second time enjoined from taking any part of this money.

We stop at this point, to call attention to the cases cited on appellant's brief at page 17.

If the court will examine them, they will find that they have no bearing whatever in favor of defendant. In a New York case, 23 N. Y., *Moultrie* v. *Hunt*, the Court say, page 396, "All civilized nations agree, as a general rule, to recognize title to movable property created in other States or countries, in pursuance of the laws existing there, and by parties domiciled in such States or countries."

And that is precisely the case we are discussing. The Court of Chancery of New Jersey, the Court of Appeals of that State, and the Supreme Court of the United States, have each and all declared that the title to all the interest which Rodman M. Price had in the debt due him from the United States passed, by virtue of the Receivership and the Statute Law of New Jersey, to Borcherling, the claimant here.

As to the idea that no court of the United States has ever held that such a foreign Receivership passed title to property within its own sovereignty, except by virtue of comity, implied by the argument of defendant, we call attention to the language of Mr. Justice Miller, in *Goodman* v. *Niblack*, 102 U. S., 556, as to the U. S. Statute as to assignments of claims on the Treasury:

> "We held it did not include a transfer by operation of law, or in bankruptcy, and we said it did not include one by will. The obvious reason of this is that there can be no purpose in such cases to harrass the Government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim, and that the exigencies of the party who held it justified and required the transfer that was made. In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent debtor *of all his effects*, which must, if it be honest, include a claim against the Government, differ from the assignment which is made in bankruptcy? There

> can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment. The claim is not specifically mentioned, and is obviously included only for the just and proper purpose of appropriating the whole of his effects to the payment of all his debts. We cannot believe that such a meritorious act as this comes within the evil which Congress sought to suppress by the act of 1853."

Here the Court expressly holds that assignments by operation of law or voluntary assignments in general terms, include claims against the Government. In Erwin's case, 97 U. S., 392, the transfer of a claim to an assignee in bankruptcy covered a debt due by the United States. Other cases agree; and all show that States hold that claims against the Government passed by operation of law; and so created property in assignees, as to a debt due by the Government.

Too great attention cannot, however, be given to the fact that Mr. Borcherling gets his rights, not through an order of Chancery, made in exercise of the general equitable jurisdiction of the Court of Chancery, but under the statute law of Mr. Price's domicile State. The act under which this receivership was created was passed in 1875, and it authorizes appointment by Chancery of a Receiver of the property and things in action, and so forth, as already quoted, "who *thereby* shall receive authority to possess, receive, and in his own name as such Receiver sue for all such property and things in action, and the evidence thereof. And the said Chancellor may order said debtor to convey and deliver to such Receiver all such property and rights in action, and the evidence thereof."

In *Miller* v. *McKenzie*, 2 Stew., 292, the late Chief Justice Beasley, describing a receivership similar to that of Mr. Borcherling, says:

> "In regard to the personal property of the debtor —and it alone is here in question—it seems clear to me that one of these receivers, by the act appointing him, becomes vested with the title. Defining the effect of his appointment, the act says that he *thereby* shall receive authority to possess, receive, and, if need be, in his own name as such Receiver sue for property or things in action. These terms are quite comprehensive, and the statute being a remedial one, it would be illegal to limit their effect, unless called for by very cogent considerations."

The title of Mr. Borcherling cannot be divested by any court, either in New Jersey or elsewhere. From the moment of his appointment and its completion by filing bond and taking the oath of office, Rodman M. Price had no personal property anywhere. It all passed to Borcherling. Yet the Treasury decided that $7,900 of it did *not;* that it remained Mr. Price's; and they gave it to him, although notice of this claim was pressed upon them.

As already stated, the case of *Redfield, Receiver*, vs. *the United States*, in this Court, 27 Court of Claims, R. 393, is entirely in unison with our contention here. There is a slight difference between the facts of that case and ours. The New York Statute was not as direct in giving effect to the appointment of a Receiver. The Jersey Statute, describing the officer as the Receiver of property and things in action, and so forth, of the debtor, goes on to state that the Receiver *thereby* shall receive authority to possess, and so forth. The appointment transfers the title. The New York Statute makes the power more dependent on the conferring of authority by the Court. In the Redfield case, the New York Statute had ordered an assignment of the special debt or claim; and one had been made, not in the form required by the United States Statute. That fact gave opportunity for attack; but this Court disposed of that by holding that the assignment was merely in aid of the ap-

pointment of the Receiver. In our case, we have no such special or separate assignment; but one was ordered. The order was served, but disobeyed, and proceedings in contempt filed. Such a state of things calls upon this Court to hold that all rights which the assignment directed to be given did actually pass. It, however, does not seem to me to be necessary to lean upon anything except the plain words of the statute.

The decision of this Court in the Redfield case cannot, therefore, be overruled; and it is observable that our learned adversary pays no attention to it in his industriously constructed brief.

The position taken by the learned counsel is directly in the teeth of the decision of this Court. He even scorns to defend the action of the Treasury, on the ground that this special $7,900 was rightfully taken from the fund, because it was expected to be paid to resident creditors. His contention is that the law of New Jersey had no force in this District, and that the Receiver had no title to a dollar of the money awarded Price. And he bases this contention on the case of *Ogden* vs. *Sanders* and that of *Booth* vs. *Clark*.

Ogden vs. *Sanders* simply declared that a creditor living out of the State does not lose his claim through an insolvency law of the State where his debtor resides. It has no bearing on the question whether the insolvent may not collect a debt due him in another State, by the use of its laws—by a suit, for instance, brought by the assignee for the use of the insolvent. And it certainly does not decide the point upon which argument has thus far been made.

The mistake of counsel as to the cases he cites and reviews is this. We say that each State has the sole right of authorizing property, creating it, and of regulating its transfer. And when that transfer is made according to that law, it changes the property. Counsel on the other side contend that if the property is located in another State, though temporarily, that State gains complete control of it,

and if it be a chose in action refuse to respect the title a citizen of another State has to it. And the counsel cites decisions as to insolvency laws where courts say that the right of the foreigner shall not be taken away by laws another State passes. Some of these decisions are cases where land in a State is claimed by a foreigner who has not a deed according to the forms of the State where the court is—and none of them are cases where choses in action due by the United States are in question. Then there is no foreign State—no need of courts. The contest is between citizens in law of the same State.

Booth vs. *Clark* is a peculiar case. It cannot be fully comprehended without studying with it—perhaps before considering it, the case of *Clark* vs. *Clark*, or *Hackett*, 17 Howard, 315, argued and decided at the same term.

The dispute in both cases was about the same sum of money, $69,429.14. This sum was awarded by commissioners, acting under the treaty between the United States and Mexico, to one Ferdinand Clark, as the net avails of a claim made by him for the unlawful seizure of a vessel called the Louisiana, which award the United States had agreed to pay. The award was made April 15, 1851. A month afterwards, Benjamin C. Clark, of Boston, filed his creditor's bill in the circuit court of the District of Columbia, claiming the fund for himself and other creditors of Ferdinand Clark, who had taken the benefit of the United States Bankruptcy Law, March 22, 1843, in New Hampshire. Soon after this bill was filed, Hackett, assignee in that bankruptcy, filed his bill in the District of Columbia Court, claiming the entire fund for distribution amongst the creditors. Hackett alleged fraud by the bankrupt, and that he had concealed this property from his creditors. The answer of Ferdinand Clark denied fraud, set forth his proceeding, and alleged that a deceased assignee had sold this claim at public auction, that R. M. Clark (who was his sister),

bought it, and he had bought from her; and so defended his own ownership.

In his first schedule, it appeared, the bankrupt had not mentioned this claim; but in an amendment after his discharge, it was alluded to thus:

"U. S. Government, Claim.

"Spanish Government, Claim.

"Buenos Ayres Government, Claim.

"Mexican Republic, subject to a Mortgage, Claim."

Ferdinand Clark was prosecuting the claim before he sought the benefit of the Bankrupt Law, and continued this prosecution until it was allowed—for eight years or so. The Court (p. 320) was satisfied that the bankrupt intended to rid himself of his debts, and then buy the claim, through his sister; for his own benefit (See p. 318, Judge Catron's opinion). His sister paid, at auction, $2 for the claim.

The decree appealed from ordered that the funds should be paid over to Hackett for distribution in the Bankrupt Court of New Hampshire, amongst the creditors of Ferdinand Clark; and that decree was affirmed by the United States Supreme Court.

It was a flagrant case of attempted fraud. The fund was in the United States Treasury to await the decision of the courts.

Booth v. *Clark*, as stated, involved the fate of this same fund, 17 Howard, p. 323. The suit was substantially between Howard, as assignee of Clark in bankruptcy, and Booth, Receiver in the New York Chancery under a creditors' bill; and that it might be determined which of them had the official right to this Mexican fund (See p. 329).

The New York Receiver claimed under his appointment by the Court of Chancery, and he was appointed before the bankrupt petition. His right depended upon the Statute of New York. That Statute, looked up from the citations of

the able argument of Mr. Bradley, of this District, is found to authorize the creditors' bill, and the appointment of a Receiver under it. And the first thing to be remarked is this:—the Statute of New York gave no force as a conveyance to the *appointment* of a Receiver. The procedure of the State at that time was that the Court appointed the Receiver, that he was thereby legally authorized by the Court to be *custodian* of the debtor's property; but that its *title* was not conveyed until and except by a conveyance made by the debtor, in obedience to an order of the Court. No such order had been made, no such conveyance had been executed, a fact upon which Mr. Justice Wayne, in delivering the opinion of the Court, dwells strongly (pp. 333–339). And he shows, in his opinion, the difference between adjudications in England and in this country to be; that in England, the property of the bankrupt is vested in the Assignees in Bankruptcy by legislative enactment (p. 335) that,

> "It vests the assignee with the title to the property, from the date of the conveyance, it having been previously vested in the Commissioners, for conveyance by them to the assignee. As to the bankrupt's personal estate, the statute looks beyond the debts and effects of a trader within the kingdom, and vests them in the Commissioners in every part of the world.
>
> "The last is done in England, and upon the principle that personal property has no locality, and is subject to the law which governs the person of the owner. As, by that law, the property, of a bankrupt became vested in the assignee for the purposes of the assignment, his title to such property out of England is as good as that which the owner had, except when some positive law of the country in which the personal property is, forbids it."

Now, this language shows that if the act of New Jersey which governs this case had existed in New York, the doctrine of comity could not have been invoked, nor any

such conclusion reached as that the owner of personal property could not sue for it anywhere, in some mode of procedure. Administrators holding promissory notes can sue on them out of the State, if they bring their suit as endorsees of the payee; and so in other cases of title held by officers. This, however, is of little consequence here. The thing to be noticed is, that the Statute of New Jersey enacts that,

> "It shall be lawful for the Chancellor to appoint a Receiver *Pendente lite* of the property and things in action belonging or due to, or held in trust for said debtor, who *thereby* shall receive authority to possess, receive, and in his own name as such Receiver, sue for such property or things in action."

Evidently the draftsman of this act may have had the English law in view. The word "thereby" means, clearly, by the appointment. So Jersey Courts have ruled, in this very case; and so the United States Supreme Court has done, by affirming their judgment.

Observe, too, that the proof shows an order of conveyance of all such property and rights in action, and the evidence thereof. So that all power given by the act is exhausted.

The reply, then, to *Booth* vs. *Clark*, is, that the law of New York State, upon which that decision was founded, was substantially different from that of New Jersey, which underlies this suit; and which is like that of England. And that, had the New York law been like that of England or New Jersey, the decision must have been different and directly in our favor.

Let it not be forgotten that we claim this money as money existing in New Jersey, where Price had his domicil; and so, lawfully, the subject of the statute there passed.

Nor again, let it be forgotten that the United States Government, being ubiquitous, is not a foreign corpora-

tion in New Jersey; so that the doctrine of the freedom of personality having actual existence in a foreign land, does not apply.

Note further, that this case of *Booth* vs. *Clark* was a case where justice lay all on the side of the appellees. The bankrupt assignee really owned this fund—Booth represented one creditor only. The appellee, Hackett, represented all creditors, as assignee in Bankruptcy of Clark. The fraud of Ferdinand Clark was palpable. If Booth's bill was successful, that fraud would have been so, likewise, at least, to an extent. Camera, for whose judgment Booth was receiver, if an honest creditor, would have his right on the distribution of the fund in bankruptcy. The equities of the case were, therefore, strongly against Booth and in favor of Hackett.

If this were a case where the doctrine of comity applied, there is still no law in the District of Columbia, or created by United States courts, grafting upon the acts of other courts of other States any exception in favor of citizens of the District; especially not when it operates upon the debts due by the United States itself to parties domiciled in a State, and not in the District. We refrain from pressing an argument evidently felt by adverse counsel; that this doctrine of exception in behalf of resident creditors from the law of comity, was opposed to the prevalence of the doctrine of nationality. It is not necessary, we think, that any argument upon policy should be urged by us. And yet it is not without force.

Rightly considered, is not this decision of *Booth* vs. *Clark* a decision point blank in favor of our contention? No one can doubt that Rodman M. Price was domiciled in New Jersey; no one can doubt that the *situs* of *choses in action* follows the domicile of the debtor; no one can doubt that New Jersey's Legislature had the right to enact that the ap-

pointment of a Receiver changed the title of property there situated; no one can give other than complete force to the language of New Jersey's Statute, when it declares that all the estate of a debtor, upon an order of the Chancellor, appointing a Receiver, passed *thereby* to him. No one can deny that the United States having citizenship in New Jersey should respect her laws as to the conveyance of personal property.

The opinion of the Court, in *Booth* vs. *Clark*, approves the English rule, upon the ground that, by the Statute of England, title to personality, wherever it was, belonging to a domiciled Englishman, passed to the assignee in bankruptcy by virtue of the appointment of the Commissioners.

Plainly, then, *Booth* vs. *Clark* affirms the very doctrine for which we contend, to wit: That the property in this debt due by the United States, having passed to the Receiver by operation of law, the Treasury should pay it to him.

The case seems to be within the compass of a few simple propositions:

1. The *situs* of this personal property of Price was in the State of his domicile, New Jersey.

2. The law of that State transferred it to Mr. Borcherling.

3. It became his by the operation of the law of New Jersey, on the 10th of October, 1892, certainly—perhaps his title related back to August 4th, the date of the issue of execution against Price.

4. After notice of this Receivership, the Government had *power*, no doubt, to give it to a stranger; but no right, any more than an individual.

5. It did, however, hand over $7,900 to the man who had no right to it.

6. If it gave the money to the people who posed as creditors of Price, it did it without any lawful right whatever.

7. If the Treasury officers gave it to him, Price, with the knowledge that it was for them, *i. e.* the people who posed as Price's creditors, they really gave it to *them.* Worse than that, they gave it to a man who, in taking it, acted in contempt of court and of the law, and this the Government knew, and to men who confederated with him in such contempt, which was likewise patent to the Government.

8. The doctrine that a Receiver, resident out of the particular jurisdiction, though allowed to come into it and assert his right, is subject to the claims of residents for any debt due the party represented by the Receiver, is a doctrine for a court, not for the debtor. The Government stands as a debtor. It owed Price. It could not, after Price had assigned the debt, say "we will help his friends. They live here; or, we will pay his debt to A; for he lives here."

9. Borcherling's action against the Government, in the Court of Claims, is *ex aequo equo et bono,* for money had and received for his use, a claim in respect to which the party would be entitled to redress against the United States, either in a court of law or equity, if the United States were liable to suit there. And the United States in the Court of Claims only makes such defences as an individual would have.

10. This payment was obtained in fraud and contempt of court; and if sustained, it will be taking the property of one man and giving it to another. The United States has no such duty, right or wish.

Before concluding, it may be desirable formally, though tersely, and in their order, to contest the propositions laboriously argued by counsel for the appellant.

First. It is insisted that "the manner in which the United States shall pay a debt which it owes, to whom it should be paid, whether it shall be paid at all, and whether it may be sued for, are matters entirely within the control of the United States, and beyond the control of the laws and courts of New Jersey."

True, if the United States chooses to exercise its power through act of Congress. If it does not, its will is to follow the rules of common law and of equity, being the system of Chancery law. In two cases, perhaps in others, it has exercised its power: One in organizing the Court of Claims, in which court it consents to be sued—a sort of Court of Arbitration in which judgment can be obtained by parties oppressed; but to which it has given no power to enforce its decisions. The other, the act of 1853, Sec. 3477, U. S. Rev. Stat., regulating the manner in which voluntary conveyances of claims against the United States, not those which occur by operation of law, are to be effected.

And this court, by numerous decisions, has declared substantially that the law of the domicil State operates where the transfer is not voluntary, but by operation of law.

Second. "A statute of New Jersey or a decree of a New Jersey court acting under such statute, can have no effect beyond the sovereignty of New Jersey, except at the pleasure of the sovereignty wherein such effect is sought."

We *need* not deny this; for we look in vain into the laws of Congress, which is the Legislature of the District of Columbia, for a word which forbids that a right of property obtained under a statute of New Jersey cannot be enforced in the District of Columbia—by a party owning that right—and especially that it cannot be declared and affirmed by

the very tribunal constituted by the Congress of the United States for that purpose.

The "pleasure of the Sovereignty" of the District of Columbia is that a party domiciled in New Jersey, having choses in action assigned to him by another person also there domiciled by operation of law, due from the Government of the United States, payable by its Treasurer by direction of an act of the United States Congress, to the original owner or his assigns, shall in this right-seeking Court of Claims, have the right of recovery in this District, and shall be declared to possess it.

Third. "The United States does not recognize, through comity, a statute of a State or a decree of a State transferring to a Receiver title to, or the right to possession of a debt owed by a person beyond the jurisdiction of such State; and so far as the United States is concerned, such a Receiver can sue only in the jurisdiction appointing him."

We answer:

1. The doctrine of *Comity* has nothing to do with the declaration of right which is, by permission of the United States, now sought in its Court of Claims. In some matters, the United States, in this District, has the position of a State. The action of Virginia and Maryland, authorized and contemplated in the Constitution of the United States, and perfected by their acts of cession, were a transfer of State government, to the nation, over the territory they ceded. It was bound—or will so hold itself—by Article LV, Section 1, of the United States Constitution, which directs that "full faith and credit shall be given in each State to the public *acts, records*, and *Judicial proceedings* of every other State." Such credit cannot be given, if the force of such "acts" and "proceedings" in any State can be denied in the District. Over every debt due by anyone to Rodman M. Price, New Jersey had jurisdiction; because, under law thoroughly es-

tablished in this Honorable Court and everywhere else, it had its *situs* in New Jersey. By virtue of public acts and judicial proceedings there, it became the property of Borcherling, Appellee, here. He is here, by permission—yea, invitation—of the United States, seeking a declaration that the $7,900 to which the case relates, was his, and that an officer of the United States Treasury gave it away to another or to others, when duly informed of *his* rights.

2. The doctrine of Comity does not enter into this case; because it only has place between citizens of different States, whereas the Government of the United States has ubiquity, and is a citizen of every State in the Union, and of New Jersey among them. Being thus present in New Jersey, it is bound by the local law of that State, and so itself wills that the debt it owed to Price had passed, not voluntarily, but by operation of law, to Borcherling. If this debt to Price had been incorporated in a negotiable draft given by the United States to him, but seized by Borcherling, it would have been recognized as his beyond question and been paid on presentation by him. Why not, if the draft were not drawn? The debt is the thing—not its form.

3. Upon the view favored upon the side of the Appellant, that Borcherling had right, but that it was subject to the restraint upon comity, that before the amount of the debt went to Borcherling, a foreigner, it should be used first to pay debts due by Price to parties resident in the District, (a view which we entirely deny), we have further to say, that the *debtor* cannot act judicially, and determine whether the resident claimant was a creditor or not. Some court must decide the question, having jurisdiction over the matter, notice being first given and proceedings taken, so as to bring the question of indebtedness fairly before it, for adjudication. Neither the United States Government or its Treasurer or

other such officer has the right to constitute himself arbiter, and on *ex parte* evidence, give judicial decision.

4. Especially is this last proposition true when the circumstances in this case are considered—when there was no notice, no hearing, no adjudication by the court—nothing but an *ex parte* affidavit; and when the Judge, *ex parte* likewise, simply decided that his injunction preventing payment to Price did not cover the $7,900.

That still left the action as to this amount to the Treasurer, who could exercise no judicial power, and who acted illegally, probably in ignorance. Nor did the Treasurer carry out the "comity" claim; for he gave the draft to Price himself, who he knew was restrained from taking it, by the highest court in the State of his domicile.

CORTLANDT PARKER,
Of Counsel for Appellee.

Supreme Court of the United States.

No. 150.—October Term, 1901.

The United States, Appellant, vs. Charles Borcherling, Receiver. } Appeal from the Court of Claims.

[April 14, 1902.]

The facts of this case were thus found by the Court of Claims:

"By act of Congress approved February 23, 1891, the Secretary of the Treasury of the United States was authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy and acting navy agent at San Francisco, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14, 1850, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

"August 31, 1892, the Treasury officials adjusted Price's accounts and found there was due him $76,204.08, which included a credit of $75,000 that Price said he had advanced to Van Nostrand from his private funds.

"In 1857 Samuel Forrest recovered in the Supreme Court of New Jersey a judgment against Price for $17,000 and costs. Execution on that judgment was returned unsatisfied. Forrest died in 1869, intestate.

"In 1874 his widow, Anna M. Forrest, as administratrix of his estate, revived the judgment by *scire facias*. In her bill she prayed discovery, injunction and the appointment of a receiver. Price and his wife answered. The cause slept till August 9, 1892, when Mrs. Forrest, administratrix, filed a petition stating that since filing her bill of complaint no payment had been made on the judgment against Price; that neither she nor her solicitors had been able to find any personalty or real estate belonging to Price by levy upon and sale of which any part of the amount due on the judgment could be obtained; that it had lately come to her knowledge that about $45,000 was about to be paid Price by officers of the Treasury of the United States; that that sum was to be paid by the delivery to Price or his attorneys of a draft of the Treasurer of the United States payable to his order; that said draft was to be made and the transaction closed on the 15th day of August thereafter; and if Price obtained said money he would, unless restrained, put the same beyond the reach of the petitioner.

"The petitioner prayed the appointment of a receiver of the draft, and that Price be ordered immediately on the receipt of such draft to endorse the same to the receiver, to the end that the same might be received by him as an officer of the court and disposed of according to law.

"The chancellor, August 8, 1892, issued a rule, returnable September 12, 1892, to show cause and restraining Price from making any endorsement of the draft referred to in the petition.

"A duly certified copy of the order was served upon Price, August 10, 1892. Nevertheless, after that date Price received from the Assistant Treasurer of the United States at Washington and, without permission of the court, collected for several drafts signed by that officer for the respective sums of $2,704.08, $13,500, $20,000, and $9,000, in all the sum of $45,204.08, leaving in the hands of the United States of the amount due on the settlement of Price's accounts the sum of about $31,000.

"On the 10th day of October, 1892, Charles Borcherling was appointed by the chancery court receiver in said cause of the property and things in action belonging or due to or held in trust for Price at the time of issuing said executions, or at any time afterwards, and especially of said four drafts, with authority to possess, receive and sue for such property and things in action and the evidence thereof; and it was made the duty of the receiver to hold such drafts subject to the further order of the court. The receiver was required to give bond in the sum of $40,000, conditioned for the faithful discharge of his duties. At the same time Price was ordered to convey and deliver to the receiver all such property and things in action and the evidence thereof, and especially forthwith to endorse and deliver the drafts to him, and he and all agents or attorneys appointed by him were enjoined and restrained from intermeddling with the receiver in regard to said drafts, and ordered, if in possession or control thereof, to deliver them to the receiver with an endorsement to that officer or to the clerk of the court for deposit; provided, the order should be void if the drafts other than the one for $9,000 were delivered with Price's endorsement to the clerk, the proceeds to be deposited to the credit of the cause. Price was expressly enjoined from making any endorsement or appropriation of the drafts other than to the receiver or the clerk for deposit.

"The receiver gave the required bond, and having entered upon the duties of his office, he caused a copy of the above order to be served upon Price, and demanded compliance with its provisions.

"In 1892, the particular day not being stated, the chancery court issued an attachment against Price for contempt of court in disobeying the order of August 8, 1892. By an order made May 18, 1894, the court held him to be guilty of such contempt, and he was directed to pay the receiver the sum of $31,704.08, and a fine of $50 and costs, and in default of obedience to that order to be imprisoned in the county jail until it was complied with. (7 Dickinson [52 N. J., Eq.] 61, 31.) Upon appeal to the Court of Errors and Appeals, the order of the chancery court was affirmed. (8 Dickinson [53 N. J. Eq.] 693.)

"The Treasury Department, at the time of allowing the $76,204.08, withheld $31,000, under the provisions of the act of March 3, 1875 (18 Stat. 481), to await the determination of a suit to be instituted against Price, or surety upon Van Nostrand's bond as acting purser, United States Navy.

"The suit was instituted, but was dismissed some time previous to December 22, 1893.

"On the 16th of July, 1892, counsel for Mrs. Forrest wrote the Secretary of the Treasury referring to a previous letter to the Department of May 14, 1891, in the matter of the claim of Rodman M. Price, and asking to be seasonably advised in the case the Department took action in the direction desired by Price.

"The Secretary was advised that Mrs. Forrest could prove to the satisfaction of the Department that if Mr. Price did turn over $75,000, or any large sum, to the United States, a part of that sum, namely, $17,078.04, must have belonged to Mrs. Forrest; that it was trust money, and it would not be equitable to cause that much to be paid to Price.

"By letter of November 27, 1893, counsel for the receiver notified the Secretary of the Treasury of Borcherling's appointment and qualification by giving bond of $40,000; that Price, though personally enjoined, had, in contempt of the New Jersey court, endorsed the drafts and collected the proceeds. The letter inclosed is a certified copy of the order of the court, October 10, 1892, appointing the receiver. Counsel in behalf of the receiver made claim for the balance of $31,000 about to be paid Price under act of February 23, 1891.

"The letter closed as follows: 'I respectfully ask that comity be shown the chancellor of New Jersey, and that the draft to be issued in payment of the balance due and payable to the order of Rodman M. Price be not delivered (or mailed) to said Price or his attorney, but be transmitted to the chancery court of the State of New Jersey, at Trenton, N. J., where said Price's rights will be abundantly protected, the receiver, of course, being an impartial officer of the court. I request that before action is taken (other than as asked for by the receiver) due notice may be given me that the receiver may be heard, to set forth the reasons why this disposition should be made of the drafts in question. Let me add that the Forrest judgment and interest now exceeds the sum of $60,000.'

"On December 4, 1893, the chancery court of New Jersey, being informed by the receiver that Price, assisted by John C. Fay, Esq., his attorney, was endeavoring to obtain payment at the Treasury of the balance, about $30,000, of this debt, and appropriate it for his own use, issued orders against Price, enjoining him from seeking to obtain payment of any part of that sum.

"On December 6, 1893, the receiver notified the Secretary of the Treasury, by letter, that a copy of injunction of December 4 had been served upon Price, and enclosed a copy of the same to the Secretary. He also invited the attention of the Secretary to the opinion of the Court of Claims in *Redfield* v. *United States*, in the twenty-seventh volume of reports of the court; informed him that he (the receiver) had applied to the Supreme Court of the District of Columbia for an injunction, and asked that if that court should not grant relief he might have the benefit of the injunction of the New Jersey court now brought to the Secretary's notice. The receiver asked that if no relief were granted by the Supreme Court of the District that the Secretary send the drafts (otherwise to be handed to R. M. Price) to the chancellor of New Jersey, at Trenton.

"The Supreme Court of the District of Columbia, December 19, 1893, in a proceeding for injunction upon bill of Borcherling, receiver, and Anna M. Forrest, administratrix, after personal service upon Price and Fay, enjoined Price from receiving, assigning, collecting or endorsing to his own use, by himself or by attorney, any warrants or drafts from the Treasury of the United States in payment, in whole or in part, of any balance remaining unpaid under act of February 23, 1891, until the further order of the court; and it being the design of this order in nowise to interfere with the claim of any creditor of the said Rodman M. Price, resident in this District, against said Price, it is further ordered and de-

creed that, upon the representation of any person so claiming to be a creditor in this District and the establishment of such claim in a manner that shall satisfy the court of the *bona fide* existence of such claim, so much of said balance as shall be sufficient to cover any and all such claims so established shall be considered as exonerated from the effect of this decree.

"The Supreme Court of the District, on the 22d of December, 1893, passed the following order in the said suit:

"'From the affidavits of John C. Fay and Jeremiah M. Wilson, claimants, and the assent and affidavit of the said Rodman M. Price, filed this day, it appearing to the satisfaction of the court that John C. Fay, Richard J. Bright, Frank S. Bright, Samuel Shellabarger, J. M. Wilson and M. L. Woods, residents of the District of Columbia, appear to be *bona fide* creditors of the defendant, Rodman M. Price, and it appearing to the satisfaction of the court that as such they have *bona fide* claims for services rendered said Price to the extent of $7,900, it is ordered that the sum of seven thousand nine hundred dollars ($7,900) shall be exonerated from the effects of the decree passed herein on the 19th of December, instant, restraining and enjoining Rodman M. Price from receiving, etc., any warrants or drafts from the Treasury in payment of the whole or any part of the balance due him under the act of February 23, 1891; and said injunction order shall not operate to affect said sum of seven thousand nine hundred dollars.'

"Counsel for the receiver, Friday, December 22, 1893, addressed the Assistant Secretary of the Treasury, setting forth the fact that the order of that day had been hastily acted upon, and explaining that the judge sent a verbal order to counsel to be in court at 1 o'clock; that he had already told Mr. Fay, attorney of Price, that he wanted copies of his papers served two days in advance, in compliance with the rules; that at 12 o'clock he had been telegraphed for to go out of the city on account of illness in his family, and had sent a message to that effect to the judge. The letter also notified the Secretary that the receiver claimed that the money under the Redfield case belonged to the receiver and not to Price. Counsel asked a reasonable delay, that he was obliged to leave Washington, but expected fully to return Saturday night, and expressed hope that 'no action will be railroaded through to pay out any money to-morrow.' He also notified the Treasury that a mandatory order had been issued against Price in New Jersey, and asked that before any action was taken to paying Price, that he (counsel) might be heard to show reason why the money had not passed to the receiver under the ruling of the Redfield case, copy of which he enclosed.

"The same day counsel for the receiver sent the following telegram to the Secretary of the Treasury: 'Washington, D. C., December 22, 1893.—To Secretary of Treasury, Washington, D. C.: Please defer action in Price matter over to-morrow. The receiver notifies Treasury that he claims the money is his, not Price's, and will hold the United States responsible if paid Price or his attorney. Frank W. Hackett, attorney for receiver.'

"On the same day, namely, Friday, December 22, 1893, the Acting Secretary of the Treasury endorsed a copy of the order of the Supreme Court of the District of Columbia of December 22, with a reference to the Second Comptroller to issue a certificate in favor of Rodman M. Price for

$7,900, 'the balance to be withheld pending an injunction against Price from receiving said balance.'

"On the same day, Friday, December 22, 1893, Second Comptroller certified that there were due and payable to Rodman M. Price $7,900; the balance, $23,100, to be withheld 'pending an injunction against Price from recovering said balance now pending before the Supreme Court of the District of Columbia.'

"The draft on navy warrant No. 907, dated December 23, 1893, and payable to the order of Rodman M. Price, late purser, United States Navy, for $7,900, was paid at the Treasury December 23, 1893, by the Treasurer of the United States, said draft being endorsed 'Rodman M. Price, late purser, United States Navy; John C. Fay.'

"On the 25th of December, 1893, Borcherling, receiver, addressed a letter to the Secretary of the Treasury, claiming that on and after October 10, 1892, all property in the right to Price to receive from the United States the balance under the act approved February 19, 1881, passed to him, the receiver. He reminded the Secretary that on the 27th of November, 1893, he had the honor of advising the Treasury of his appointment and enclosing a copy of the order of the chancellor; that Mr. Fay, attorney for Mr. Price, had full notice of the receivership as well as of the injunction of the court of chancery addressed to Price and his attorneys forbidding them from receiving any part of the $31,000; and that both Fay and Price had committed contempt of court. The receiver asked the Secretary to take the opinion of the Attorney General upon the following questions:

"1. Did the appointment of a receiver by the Chancery Court of New Jersey convey to that officer the property in the claim against the United States of Rodman M. Price?

"2. Would payment to the receiver be a quittance to the United States in the premises?

"3. Can the Secretary of the Treasury safely pay to Rodman M. Price or his heirs the money still unpaid under the act of February 19, 1891, now that the receiver claims that it should be paid over to him?

"A similar letter was addressed by the receiver and his counsel to the Secretary of the Navy.

"On April 1, 1899, the Comptroller ordered the balance, $23,100, to be paid to Charles Borcherling, receiver, and the same was paid at the Treasury that day to Mr. Borcherling, the present claimant.

"Upon the foregoing findings of fact the court decide, as a conclusion of law, that the claimant is entitled to recover from the United States the sum of seven thousand and nine hundred dollars ($7,900.)"

Thereafter an appeal was allowed and taken to this court.

Mr. Justice SHIRAS delivered the opinion of the Court.

The facts and law of this case were so fully and satisfactorily discussed in the court below that its opinion might well be adopted as that of this court. (35 Court of Claims Rpts. 311.)

We shall, however, briefly examine some of the propositions urged in the brief of the government filed in the case.

The first and principal contention is that the United States is a sovereignty and has absolute control of the manner in which it shall pay its debts, the persons to whom they shall be paid, and, in fact, whether they shall be paid or sued upon at all; that it is incompetent for the State of New Jersey, through a statute or a decree of its courts, to direct to whom such a debt shall be paid; that the United States, through comity, may or may not recognize such a New Jersey statute or decree, as it may determine, but without such recognition such statute or decree is inoperative upon the disposition of such debt; that the United States does not recognize, through comity, the passing of title to a claim against it to a receiver appointed under a State statute or decree, and that consequently, in the present case, the United States had a right to pay the debt to the original creditor, and was discharged by such payment.

It is not necessary for us to consider whether the power of the United States over debts due by it and over the mode by which such debts shall be paid is wholly unrestricted, because the United States has not chosen to stand upon its sovereignty in such particulars, but has provided in the act of March 3, 1887, c. 359, that the Court of Claims and, concurrently, the District and Circuit Courts of the United States, "shall have jurisdiction to hear and determine all claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of any executive department, or upon any contract, express or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity or admiralty, if the United States were suable."

This is not a case within the category of payments by way of gratuity, payments as of grace and not of right, as was the case of *Emerson's Heirs* v. *Hall*, (13 Pet. 409,) and where it was said by Mr. Justice McLean: "A claim having no foundation in law, but depending entirely on the generosity of the government, constitutes no basis for the application of any legal principle. It cannot be assigned. It does not go to the administrator as assets. It does not descend to the heir. And if the government, from motives of public policy, or any other considerations, shall think proper, under such circumstances, to make a grant of money to the heirs of the claimant, they receive it as a gift or pure donation—a donation made, it is true, in reference to some meritorious act of their ancestor, but which did not constitute a matter of right against the government. In the present case the government might have directed the money to be paid to the creditors of Emerson, or to any part of his heirs. Being the donor, it could, in the exercise of its discretion, make such distribution or application of its bounty as circumstances might require. And it has,

under the title of an act 'for the relief of the heirs of Emerson,' directed, in the body of the act, the money to be paid to his legal representatives. That the heirs were intended by this designation is clear; and we think the payment which has been paid to them under this act has been rightfully made; and that the fund cannot be considered as assets in their hands for the payment of debts."

This distinction between mere grants by the government by way of gratuity and debts or claims of right was likewise recognized by this court n the French spoliation cases, where it was held that the payments prescribed by the acts of Congress were gratuities, and that creditors, legatees and assignees in bankruptcy could be rightfully excluded. (*Blagge* v. *Balch*, 162 U. S. 439.)

Here the government was not the donor of the money of Price, but was its custodian, awaiting its lawful distribution.

As to the contention that the debt due from the United States to Price could not be transferred from Price to the claimant by operation of the laws of New Jersey, nor by any decree that the courts of New Jersey, operating under such laws, could make, it is sufficient to say that this court has held otherwise.

In *Vaughn* v. *Northrup*, (15 Pet. 1,) Mr. Justice Story, delivering the opinion of the court, said: "The debts due from the government of the United States have no locality at the seat of government. The United States in their sovereign capacity have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the United States; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile," and accordingly it was held, in that case, that "the administrator of a creditor of the government duly appointed in the State where the creditor was domiciled at the time of his death, has full authority to receive payment and give a full discharge of the debt due his intestate in any place where the government may choose to pay it, whether it be at the seat of government or at any other place where the public funds are deposited; and that moneys so received constituted assets under that administration, for which he was accountable to the proper tribunals of the State where he was appointed."

Price v. *Forrest*, (173 U. S. 410,) was one phase in the present controversy. There the question was between the heirs of Rodman M. Price and Bocherling who had been appointed by the Chancery Court of New Jersey receiver of the assets of Price, including the money belonging to him in the Treasury of the United States. It was held by the courts of New Jersey that the receiver was entitled to the money in the Treasury, and the heirs and administrator of Price were enjoined from demanding or receiving from the Secretary of the Treasury, or any officer thereof, the

said money or any part thereof. The cause was brought to this court, and, after full consideration, the decree of the Court of Errors and Appeals of the State of New Jersey was affirmed. Two things were thus determined—first, generally, that it was competent for a State court of the domicile of a creditor of the United States, and having jurisdiction over his person, to decide a controversy between his heirs and creditors as to the right to receive moneys held in trust by the United States; and, second, specifically, under the facts of the present case, that the title to the moneys of Price in the Treasury of the United States had passed, under the laws of the State of New Jersey and the decree of its courts, from Price and his heirs, and had become vested in Borcherling, the receiver.

It is not open to doubt that the Court of Claims has jurisdiction to entertain the claim of the receiver to receive the fund, the title to which had thus become vested in him. The jurisdiction of that court extends throughout the United States. It issues writs to every part of the United States, and is specially authorized to enforce them. (10 Stat. 612, sec. 3.) By establishing this court, the United States created a tribunal to determine the right to receive moneys due by the government. Such legislation did not leave the Treasury or its officers free to arbitrarily select, between conflicting claimants, the one to whom payment should be made.

It is finally contended, in behalf of the government, that even if it was competent for the State courts to determine the controversy between the rival claimants to this fund, and even if the Court of Claims has jurisdiction to give effect to such determination, yet the rights of creditors resident within the District of Columbia were paramount to those of the New Jersey receiver, and that a payment made directly to them by the acting Secretary of the Treasury would be a lawful discharge of the United States.

Undoubtedly, as between different States or sovereignties, the general rule is that the courts of one will not aid the officers of another to withdraw funds or property of a decedent without providing for local creditors. But such a rule has no application in a case like the present, where the government of the United States has ubiquity in all the States of the Union, and does not hold moneys due a creditor subject to the local demands or claims of residents of the District of Columbia. Moreover, such a rule is for a court having control over the fund in dispute. It is not for a ministerial officer of the Treasury, having no judicial powers, to give effect to such demands.

It is, indeed, suggested that the action of the Supreme Court of the District of December 22, 1893, was a legal determination which operated to relieve Price, as to a portion of this fund, from the injunction of that court, enjoining him from receiving or collecting moneys due him in the

Treasury of the United States, and to authorize the Treasurer of the United States to pay such portion of the fund in disregard of the decree of the New Jersey court.

But it is obvious that the Supreme Court of the District had no jurisdiction or control over the money in the Treasury of the United States. It was dealing only with the parties before it, of whom the United States was not one. The order referred to doubtless did relieve Price from the existing injunction of that court, and left him free, so far as that injunction was concerned, to urge his claim against the United States; but it did not, and could not, relieve Price from the injunction and decree of the New Jersey court. Nor could such order operate as a legal adjudication, which would permit the Treasurer of the United States to disregard the decree of the courts of New Jersey and the title of the receiver thereunder, of which the department had full notice. In point of fact, inspection shows that this order was not intended as an adjudication. It was merely *ex parte*, and its only purpose or effect was to permit Price to push elsewhere his claim against the government. Such an order could not have been the subject of an appeal, even if an opportunity had been afforded to the receiver to take an appeal.

When analyzed, this contention will be perceived to be only a renewal of the one already considered, namely, that a ministerial officer, having no judicial or statutory powers in the premises, in a case wherein the government was the debtor, could arbitrarily, without notice to the legal holder of the claim, pay the money in dispute in this case over to Price. This, we have seen, he had no power under the law to do, and such a disposition of the money could not be successfully pleaded in the Court of Claims as a lawful discharge of the United States.

For these reasons, and referring, for a fuller discussion of the questions involved, to the opinion of the Court of Claims, we think the conclusions of that court were correct, and its judgment is accordingly

Affirmed.

Mr Justice WHITE dissented.

Mr. Justice HARLAN took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.